JACKSON McDONALD
MULTI-SECTOR LAW

Consolidation of all amendments up to and including 13 May 2026

Noongar Boodja Trust

William Michael Gerard Lawrie
(Settlor)

And

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Noongar Boodja Trust

Date: 29 March 2021

Parties

William Michael Gerard Lawrie of (Settlor)	**care of South West Aboriginal Land and Sea Council, Level 2, 100 Royal Street, East Perth, Western Australia**
Perpetual Trustee Company Limited of (Trustee)	**Level 18, 123 Pitt Street, Sydney, New South Wales**

Background

A. The Noongar Community has reached a settlement with the State of Western Australia pursuant to six ILUAs, whereby native title rights and interests are dealt with in the manner envisaged in sections 24CB(e) and 24EB(1)(d) of the Native Title Act.

B. Pursuant to the ILUAs the Noongar Community:

(a) will receive a benefits package over a 12 year period consisting of a Noongar future fund, operations fund, cultural land fund, housing land fund and development land fund;

(b) has established this Trust to meet the requirements for a trust that will operate in perpetuity to receive, hold and Apply the benefits payable under the ILUAs to or for Eligible Noongar Entities;

(c) has or will establish a regional Aboriginal Corporation for the traditional owners in each of the six Regions within the Noongar Boodja Traditional Lands being an Aboriginal Corporation to provide community services to and support the growth and development of the traditional owners and their communities in their Region; and

(d) has or will establish one central services Aboriginal Corporation to assist the Noongar Community as a whole and provide administrative and other services to the Regional Corporations referred to above.

C. In accordance with the terms of this Deed, the Trustee will provide financial support to the Eligible Noongar Entities that, in turn, will have corresponding reporting and other obligations to the Trustee.

Agreement

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context requires otherwise, the following expressions have the following meanings:

Aboriginal Corporation	means a corporation registered under the CATSI Act;
Advisory Committee	has the meaning given in clause 22.9;
Agreement Group	means the relevant "Native Title Agreement Group" as defined in an ILUA;
Agreement Group Endorsement	means an endorsement given by an Agreement Group in accordance with Schedule 6;
Annual Budget	means in each Financial Year, the budget determined by the Trustee under clause 18.2;
Annual ENE Allocation	has the meaning given in clause 18.2(a)(ii);
Annual Operations Budget	means in each Financial Year, the annual operations budget determined by the Trustee under clause 18.2;
Annual Special Projects Budget	means in each Financial Year, the annual special projects budget determined by the Trustee under clause 18.2;
Apply	includes, but is not limited to, paying, distributing, accumulating, setting aside, committing or crediting any part of the income or capital of the Trust Fund and the terms "**Application**", "**Applied**" or "**Applies**" have a corresponding meaning;
Appointors	has the meaning given in clause 13.3;
Associates	has the meaning given to that term in section 318 of the *Income Tax Assessment Act 1936* (Cth) and the term "**Associate**" shall have a corresponding meaning;
Attorney General	means the person from time to time holding the Ministerial position of Attorney General of Western Australia;
Auditor	means a qualified and Independent person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act;

Australian Financial Services Licence or AFS Licence	means an appropriate Australian Financial Services Licence pursuant to Chapter 7 of the Corporations Act or such other licence pursuant to replacement or equivalent legislation;
Ballardong Region	means the lands the subject of the ILUA entered into by the State and the Ballardong native title claim group;
Budget Principles	means the principles described as the budget principles in clause 18.3;
Business Day	means a day on which the major trading banks are open for business in Perth, except a Saturday, Sunday or public holiday;
CATSI Act	means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
Commissioner of Taxation	means a Commissioner of Taxation (Federal), Second Commissioner of Taxation (Federal) and Deputy Commissioner of Taxation (Federal) as provided for in sections 4 and 7 of the *Taxation Administration Act 1953* (Cth);
Code of Conduct	has the meaning given in clause 3.2(c)(i);
Conditional Period Expiry Date	has the meaning given to the term "Conditional Period Expiry Date" in clause 10 of the ILUAs;
Consumer Price Index	means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then Consumer Price Index shall mean such other index as represents the rise in the cost of living in Perth, Western Australia as the State reasonably determines after consulting with the Trustee and the Noongar Relationship Committee;
Contributor	~~means any person, organisation, trustee of another trust, the State (otherwise than in respect of the State's obligations under the ILUAs) or the Commonwealth that contributes money, investments, property or other assets to the Trust Fund from time to time;~~ means any person, organisation, trustee of another trust, the State (otherwise than in respect of the State's obligations (other than clause 15a of the Settlement Terms or as otherwise agreed in writing between the State and the Eligible Noongar Entities) under the ILUAs) of the Commonwealth that contributes money, investments, property or other assets to the Trust Fund from time to time.
Contribution	means money, investments, property or other assets of any kind from a Contributor;

Corporations Act	means the *Corporations Act 2001* (Cth);
CSC	means a corporation that is appointed by the Trustee as the Central Services Corporation in accordance with clause 5.1;
CSC Core Services	means the core services to be undertaken by the CSC to or for the benefit of the Noongar Community as determined in accordance with item S2.3 of Schedule 2 and as varied from time to time;
CSC Optional Services	means the optional services to be provided by the CSC to the Regional Corporations as determined in accordance with item S2.5 of Schedule 2 and as varied from time to time;
CSC Principles	means the principles described as the "CSC Principles" as set out in Annexure E of Schedule 10 to the ILUAs;
CSC Regional Services	means the principal services to be provided by the CSC to the Regional Corporations as determined in accordance with item S2.4 of Schedule 2 and as varied from time to time;
CSC Services	means the CSC Core Services, CSC Regional Services and CSC Optional Services;
Cultural Land	means any estate, right, interest in land or Management Order held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Cultural Land;
Cultural Land Development Decision	means a decision to do any of the following in relation to the whole or part of any Cultural Land in a Region: (a) granting an interest to a third party other than the Relevant Regional Corporation; (b) undertaking works that are, in the reasonable opinion of the Trustee, likely to involve significant ground disturbance; and (c) erecting any building or improvement;
Cultural Land Fund	means the Sub Fund established under clause 10;
Custodian Trustee	means the custodian trustee of the Trust appointed under clause 13.2.3;

Decision to Proceed means a decision to enter into a binding agreement or arrangement to exploit land by any of the following:

(a) selling;

(b) leasing, licensing or otherwise granting a third party a right or interest to occupy or possess;

(c) mortgaging, charging or otherwise granting any security or preferential interest of any kind; and

(d) erecting one or more buildings or improvements, or renovating existing buildings or improvements, the aggregate cost of which in a financial year exceeds $500,000 (indexed annually in accordance with the Consumer Price Index);

Dedicated Trustee means a Nominee Entity that meets the Dedicated Trustee Requirements and is appointed as Trustee by the Appointors under clause 13.4;

Dedicated Trustee Requirements means the requirements in Schedule 7;

Deed means this trust deed as amended from time to time;

Deed of Appointment means the deed of appointment referred to in clause 13.4(g);

Default Investment Policy means the policy in Schedule 11 as Modified from time to time;

Development Land means any estate, right or interest in real property held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Development Land;

Development Land Fund means the Sub Fund established under clause 11;

Dispute means a dispute referred to in clause 3.6;

Dispute Notice means the notice described as the dispute notice in clause 3.6(c);

Dispute Resolution Procedure means the procedure for resolving a Dispute, as set out in Schedule 12;

Distribute ~~means to distribute, pay, commit, credit, apply or otherwise expend and "**Distribution**" and "**Distributes**" have a corresponding meaning;~~

means to distribute, pay, commit, credit, lease, apply or otherwise expend and "**Distribution"** and "**Distributes**" have a corresponding meaning;

Eligible Charity	means a fund, institution or other entity endorsed by the Commissioner of Taxation as income tax exempt under Sub-division 50-B of the *Income Tax Assessment Act 1997* (Cth);
Eligible Noongar Entities	means the: (a) CSC; and (b) Regional Corporations;
ENE Appointment Notice	means a written notice from the Trustee to an entity nominated in an ENE Nomination appointing the nominated entity as: (a) a Regional Corporation under clause 4.1(a); and (b) the CSC under clause 5.1(a), as specified in the notice;
ENE Default Notice	means a written notice from the Trustee specifying an eligibility default and issued to: (a) a Regional Corporation under clause 4.2(a)(i); or (b) the CSC under clause 5.2(a)(i), as specified in the notice;
ENE Distribution Account	has the meaning given in clause 17.6(b);
ENE Nomination	means a written notice to the Trustee from an entity seeking appointment as: (a) a Regional Corporation under clause 4.1(a); or (b) the CSC under clause 5.1(a), as specified in the notice;
ENE Operations Account	has the meaning given in clause 8.3;
ENE Termination Notice	means a written notice from the Trustee terminating the appointment of: (a) a Regional Corporation under clauses 4.2(a)(iii) or 4.3(a); or (b) the CSC under clause 5.2(a)(iii), as specified in the notice;

Expert	means a person having 6uthorizin qualifications and at least 5 years demonstrated experience that is appropriate and relevant to the matter for which the Expert is required;
Facilitator	means an entity who facilitates meetings of an Agreement Group and being either: (a) nominated by the Trustee; or (b) where the meeting of the Agreement Group takes place prior to this Deed, the legal representative of that Agreement Group;
Financial Year	means the period from the date of this Deed to 30 June and then each period of 12 months ending on 30 June in each year;
First Year	means the period from the date of this Deed to 30 June;
Funding Guidelines	means the funding guidelines established by the Trustee in accordance with clause 17.9;
Funding Principles	means the principles described as the Funding Principles in clause 17.10;
Future Fund Capital Base	has the meaning given in clause 7.1(b);
Gnaala Karla Booja Region	means the Gnaala Karla Booja lands and that part of the Harris Family lands the subject of the ILUA entered into by the State and the Gnaala Karla Booja and Harris Family native title claim groups;
Government Trading Entity	means a body corporate which: (a) is established by State legislation; (b) has a board of directors; (c) is expressed not to be an agent of the State; and (d) carries on business activities;
Housing Authority	means the body corporate established by section 6(4) of the *Housing Act 1980* (WA);
Housing Land Development Activities	has the meaning given in clause 12.2(d);
Housing Land	means any estate, right or interest in real property held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Housing Land;
Housing Land Fund	means the Sub Fund established under clause 12;

ILUA means each of the Indigenous Land Use Agreements entered into by the State and the following native title claim groups:

(a) Whadjuk;

(b) Yued;

(c) Gnaala Karla Booja and Harris Family;

(d) South West Boojarah and Harris Family;

(e) Wagyl Kaip and Southern Noongar; and

(f) Ballardong,

which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act, and which are collectively referred to as the ILUAs;

ILUA Commencement Date means the Trust Effective Date as that term is defined in the ILUAs;

ILUA Housing Properties means the properties to be transferred from the Housing Authority to the Land Sub pursuant to the ILUAs;

ILUA Termination Amount has the meaning given to the term "ILUA Termination Amount" in clause 10 of the ILUAs;

ILUA Termination Notice has the meaning given to the term "ILUA Termination Notice" in clause 10 of the ILUAs;

Indemnified Amount has the meaning given to the term "Indemnified Amount" in clause 12 of the ILUAs;

Indemnified Amount Notice has the meaning given to the term "Indemnified Amount Notice" in clause 12 of the ILUAs;

Independent means:

(a) in the case of a person, the person is not (and a member of the person's immediate family is not):

(i) a member of an Agreement Group;

(ii) a lineal descendant of, or first cousin of, a member of an Agreement Group;

(iii) married to or in a de facto relationship with a member of an Agreement Group;

(iv) a parent or sibling of a person who is married to or in a de facto relationship with a member of an Agreement Group;

(v) currently, and has not within the period of 3 years prior to their appointment been:

A. an employee, director, consultant, advisor, auditor or other service provider to the Noongar Community or any related or associated entity of an Agreement Group; or

B. an employee or director of a company or partner in a partnership, which is a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;

(b) in the case of an entity, the entity is not:

(i) an entity in which an Agreement Group (or any member of an Agreement Group) has a material interest;

(ii) an entity which is controlled by an Agreement Group (or any member of an Agreement Group); or

(iii) currently, and has not within the period of 3 years prior to its appointment been a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;

Insolvency Event means in respect of a company when:

(a) the company resolves to go into liquidation;

(b) a liquidator, a provisional liquidator, receiver, receiver and manager, administrator, official manager, judicial manager or similar official is appointed to the company or over the company's assets or undertaking;

(c) the company resolves to enter into a scheme, a composition or any similar arrangement or procedure with creditors; or

(d) the company receives a statutory demand under section 459E of the Corporations Act, which the company fails to comply with or apply to set aside, within the period for compliance or have set aside under section 459G of the Corporations Act;

Interim CSC means an entity appointed by the Trustee as the "Interim CSC" under clause 5.1(b)(ii)A during the Interim Period to exercise such functions and deliver such services as determined by the Trustee under clause 5.1(b)(ii)B;

Interim Period has the meaning in clause 5.1(b);

Investment Committee means the investment committee established under clause 20;

Investment Manager means an investment manager that at all times is Independent and:

(a) in respect of funds management:

(i) holds a current relevant Australian Financial Services Licence (or is an authorizing representative of such a licensee); and

(ii) holds appropriate authorisations to permit it, in accordance with the Corporations Act, to give advice regarding the Investment Policy and the various categories of investments held by the Trust and to deal with those investments; and

(iii) has at least 10 years investment management experience in relation to funds under management of greater than $500 million; or

(b) in respect of direct property investment:

(i) has at least 10 years direct property management experience in relation to property assets under management of greater than $500 million (indexed annually in accordance with the Consumer Price Index);

Investment Policy means an investment policy for the Trust prepared in accordance with clause 19.4;

Investment Principles means the investment principles set out in clause 19.3;

Land Register means the register to be maintained in accordance with clause 22.1(b);

Land Sub means the subsidiary company to be established by the Trustee and described as the Land Sub in accordance with clause 22.1;

Management Order means an order by which care, control and management of a reserve are placed with a management body under section 46 of the *Land Administration Act 1997* (WA);

Mediation Guidelines	means the rules or guidelines for mediation as adopted from time to time by the Institute of Arbitrators and Mediators Australia or an equivalent body;
Mediator	means a person who is a member of, and accredited as a mediator by, the Institute of Arbitrators and Mediators Australia or an equivalent body;
Modify	means to modify, vary, amend, alter, change or correct and the terms "**Modified**", "**Modifying**" and "**Modification**" shall have a corresponding meaning;
Native Title Act	means the *Native Title Act 1993* (Cth);
Net Proceeds	has the meaning given in clause 11.5(a);
Nominations Committee	means the committee established in accordance with clause 16;
Nominee Entity	means a company proposed to be appointed as a Dedicated Trustee under clause 13.2;
Noongar Advisory Company	means the Noongar advisory company established in accordance with clause 14;
Noongar Appointor	means the person appointed as such by the Noongar Corporations Committee from time to time in accordance with clause 13.3;
Noongar Boodja Development Corporation	means a company incorporated under the Corporations Act (acting in its own right or as bare trustee for the Trust) the shares of which are wholly owned by the Trustee for the purpose of conducting development activities on Development Land;
Noongar Boodja Traditional Lands	means the lands the subject of the ILUAs;
Noongar Community	means the six Agreement Groups as constituted from time to time;
Noongar Corporations Committee	means the committee established by the CSC in accordance with the CSC's constitution and comprising representatives from the CSC and each Regional Corporation (if any);
Noongar Future Fund	means the Sub Fund established under clause 7;
Noongar Land Estate	means the land allocated under the Noongar Settlement to the Noongar Community pursuant to the ILUAs;

Noongar Person	means a member of the Noongar Community;
Noongar Relationship Committee	means the committee established by the Trustee in accordance with clause 15;
Noongar Settlement	means the full and final settlement of native title in the South West of Western Australia as described in the ILUAs;
Notifiable Event	has the meaning given in clause 13.5(a);
Notifiable Event Notice	has the meaning given in clause 13.5(b);
Notifiable Event Report	has the meaning given in clause 13.5(c);
Operations Fund	means the Sub Fund established under clause 8;
Operations Funding	has the meaning given in clause 8.2(b); **Payment**
Conditions	has the meaning given in clause 17.5;
Policy and Procedures Manual	has the meaning given in clause 3.2(c)(ii);
Professional Trustee Company	means an organisation that: (a) is a “trustee company” as that term is defined in section 601RAB of the Corporations Act; (b) holds a current relevant Australian Financial Services Licence: (i) authorising the provision of “traditional trustee company services” as defined under the Corporations Act, section 601RAA; and (ii) with appropriate authorisations as required to permit it to carry out functions under this Deed; and (c) has at least 5 years experience in carrying out the functions and providing the services similar to those required of the Trustee under this Deed;
Property Development Activities	has the meaning given in clause 11.1(d);

Protected Property	has the meaning given in item S10.1;
Reconciliation Action Plan	means a plan that identifies clear actions with realistic targets for the Trustee, and is developed in consultation with the Noongar Community that details the Trustee's contribution to: (a) reconciliation; (b) creating respectful relationships between Indigenous persons, particularly the Noongar Community, and other Australians; and (c) creating opportunities for Indigenous persons, particularly the Noongar Community;
Region	means the following regions that comprise the Noongar Boodja Traditional Lands: (a) Whadjuk Region; (b) Yued Region; (c) Gnaala Karla Booja Region; (d) South West Boojarah Region; (e) Wagyl Kaip / Southern Noongar Region; and (f) Ballardong Region;
Regional Corporation	means a corporation that is appointed by the Trustee as a Regional Corporation in respect of a specific Region in accordance with clause 4.1;
Regional Corporation Core Functions	means the core services to be undertaken by a Regional Corporation as determined in accordance with Schedule 3 and as varied from time to time;
Regional Corporation Principles	means the principles described as the "Regional Corporation Principles" as set out in Annexure E of Schedule 10 to the Relevant ILUA;
Relevant ILUA	means in respect of an Agreement Group, the ILUA relating to that Agreement Group;
Relevant Regional Corporation	means in respect of a Region, the Regional Corporation associated with that Region;
Settled Sum	means $10.00;
South West Boojarah Region	means the South West Boojarah lands and that part of the Harris Family lands the subject of the ILUA entered into by the State and the South West Boojarah and Harris Family native title claim groups;

Special Projects	~~Means a special project undertaken by an Eligible Noongar Entity in furtherance of its objects;~~ means a special project undertaken in accordance with clause 9.2 by one or more Eligible Noongar Entities in furtherance of the respective entity or entities objects.
Special Projects Fund	means the Sub Fund established under clause 9;
Special Projects Funding	has the meaning given in clause 9.2(a);
Special Project Guidelines	has the meaning given in clause 9.1(d)(ii);
Special Purpose Report	means a report of, as the case may be: (a) a Regional Corporation, prepared in accordance with clause 4.7(b); or (b) the CSC, prepared in accordance with clause 5.6(b);
Special Resolution	means a resolution passed by at least 75 percent of all persons present and entitled to vote on the matter;
Start-Up Period	has the meaning given in clause S2.1(b);
State	means the State of Western Australia, acting through the Department of the Premier and Cabinet;
State Contribution	has the meaning given in clause 10 of the ILUAs;
State Contribution Condition	has the meaning given in clause 6.4;
State Contribution Period	means the period of time beginning on the ILUA Commencement Date and expiring on the date that is twelve (12) years from the ILUA Commencement Date;
State Endorsement	means the State's written approval to the nomination of a corporation as the CSC, a Regional Corporation or any other Eligible Noongar Entity as the case may be, which approval must not be revoked during any period in which the entity is otherwise eligible to act in the relevant position;
Statutory Authority	means a body corporate which: (a) is established by State legislation; and (b) has a board of management or directors;
Strategic Plan	means the strategic plan for the Trust prepared in accordance with clause 21;

Strategic Review	has the meaning given in clause 26(a);
Sub Fund	means a sub fund of the Trust Fund established by the Trustee in accordance with clause 6.2;
Suspension Amount	has the meaning given in clause 17.7(a);
Suspension Event	has the meaning given in clause 17.7(b)(i);
Suspension Period	has the meaning given in clause 17.7(a);
Suspension Remedy	has the meaning given in clause 17.7(b)(iii);
Tax Law	means the *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth) and the *Taxation Administration Act 1953* (Cth) as amended from time to time;
Title Protection Criteria	has the meaning given in clause 10.3(d);
Traditional Laws and Customs	means the bodies of traditions, laws, customs and beliefs of the Noongar Community and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships;
Transition Principles	means the principles described as the "Transition Principles" set out in Annexure Y of Schedule 10 to the ILUAs;
Trust	means the trust created by this Deed;
Trust Fund	has the meaning described in clause 6.1;
Trust Purpose	means the Trust Purpose set out in clause 2.2;
Trustee	means the initial trustee specified in clause 13.1 or the trustee of the Trust appointed under clause 13.4 from time to time;
Trustee Expense Budget	has the meaning given in clause 23.3(a);
Trustees Act	means the *Trustees Act 1962* (WA);
Trustee's Annual Report	has the meaning given in clause 25(a);
Valid	means, in respect of an endorsement under this Deed, that the endorsement is subsisting and unrevoked;

Wagyl Kaip / Southern Noongar Region	means the lands the subject of the ILUA entered into by the State and the Wagyl Kaip and Southern Noongar native title claim groups;
Whadjuk Region	means the lands the subject of the ILUA entered into by the State and the Whadjuk native title claim group; and
Yued Region	means the lands the subject of the ILUA entered into by the State and the Yued native title claim group.

1.2 Interpretation of Clauses

(a) A word importing the singular number or plural number includes the plural and singular respectively.

(b) If two or more persons by this Deed undertake an obligation or give any warranty they will be bound jointly and severally unless the context requires otherwise.

(c) A word importing any gender includes every other gender.

(d) A reference to a "spouse" includes a de facto spouse and a person who is considered to be a spouse in accordance with Traditional Laws and Customs.

(e) The use of headings will not affect the interpretation or construction of this Deed.

1.3 Status of Schedules

(a) A reference to this Deed includes a reference to any schedule to it.

(b) The schedules form part of this Deed and are binding on the Trustee.

(c) Unless otherwise specified in this Deed, a Modification to a schedule requires a Modification to this Deed in accordance with clause 27.

2. Trust Purpose

2.1 Declaration of Trust

(a) The Trustee acknowledges that the Settlor has paid the Settled Sum to the Trustee and the Trustee receives the Settled Sum as trustee of the Trust.

(b) The Settlor and the Trustee declare that the Trustee will hold the Trust Fund and the income of the Trust Fund for the Trust Purpose and otherwise on the trusts, with the powers and subject to the provisions in this Deed.

(c) The Trustee may from time to time accept as an addition to the Trust Fund any Contribution paid or transferred to or vested in the Trustee and to be held by the Trustee as part of the Trust Fund.

(d) The Trust name is **Noongar Boodja Trust** or such other name determined by the Trustee from time to time.

2.2 Trust Purpose

The Trustee must Apply the Trust Fund solely for the purpose of providing money, property or benefits to or for Eligible Noongar Entities or for the establishment of Eligible Noongar Entities as the Trustee decides in the Trustee's absolute discretion.

2.3 Trust Activities

In support of the Trust Purpose, the Trustee must pursue the following activities:

(a) support each **Regional Corporation** to represent the interests of and deliver services to the Noongar Community of that Region and undertake the Regional Corporation Core Functions in accordance with Schedule 3;

(b) support the **CSC** to represent the interests of all the Noongar Community, deliver services to the Noongar Community and Regional Corporations and undertake the CSC Services listed in Schedule 2;

(c) hold and manage **Cultural Land** under clause 10**,** in consultation with the Relevant Regional Corporations in a manner that has regard to the spiritual and cultural connection of the relevant Agreement Group and their Traditional Laws and Customs;

(d) hold, manage, invest and develop the **Development Land** under clause 11, in consultation with the Investment Committee in a manner that aims to generate positive returns for the Trust Fund;

(e) hold, manage and invest the **Noongar Future Fund** under clause 7 in a manner that aims to ensure adequate income to support the operations and projects of the Eligible Noongar Entities in the future;

(f) hold, manage and invest the **Operations Fund** under clause 8, in consultation with the Noongar Advisory Company, in a manner that ensures, in the Trustee's opinion, adequate funds for the operations of the CSC and the Regional Corporations each year, on a fair and equitable basis;

(g) hold, manage, invest and develop the **Housing Land Fund** under clause 12, in consultation with the Investment Committee and the Noongar Advisory Company in a manner that aims to achieve improved housing outcomes for Noongar People;

(h) accept monies, land or other property from a Contributor, or allocations by the Trustee from the Trust Fund, to hold, manage and invest in the **Special Projects Fund** under clause 9 to provide funding for the CSC and the Regional Corporations for Special Projects from time to time;

(i) establish, manage and maintain the **Noongar Advisory Company** under clause 14 to provide advice and assistance to the Trustee in accordance with this Deed;

(j) establish, manage and maintain the **Noongar Relationship Committee** under clause 15 to facilitate and streamline a process for the Trustee and the Noongar Advisory Company to have direct, regular and meaningful engagement with the Eligible Noongar Entities who are the key beneficiaries of the Trust;

(k) support the CSC to maintain the **Noongar Corporations Committee**, which is the primary source for consultation as amongst the Eligible Noongar Entities;

(l) manage and maintain the **Investment Committee** under clause 20 to provide advice and assistance to the Trustee regarding the investment of the Trust Fund in accordance with this Deed;

(m) manage and maintain the **Nominations Committee** under clause 16 to "pre-qualify" candidates for positions on the CSC board, Regional Corporation boards and Noongar Advisory Company board, the Investment Committee or any other subcommittee of the Trust; and

(n) generally receive, hold, manage, invest and deal with monies, land or other benefits payable to the Trust for the benefit of the Eligible Noongar Entities to assist in the promotion and advancement of the Noongar Community, and manage and maintain other Sub Funds that the Trustee may establish from time to time, in accordance with this Deed.

2.4 Not for Profit

(a) The Trust is to be carried out without purpose of profit or private gain for the Trustee, or a member, director, employee, agent or officer of the Trustee. No part of the Trust Fund or the income may be transferred or Applied directly or indirectly by way of dividend, bonus or other profit distribution to the Trustee, or a member, director, employee, agent or officer of the Trustee.

(b) Clause 2.4(a) does not prevent the payment in good faith of any of the following in accordance with the terms of this Deed:

(i) the Trustee's remuneration determined in accordance with clause 23;

(ii) reasonable costs, charges and expenses incurred in connection with the administration of the Trust;

(iii) reimbursement to any person (including the Trustee and any member, director, employee, agent or officer of the Trustee) for any reasonable out of pocket expenses incurred in connection with the administration of the Trust;

(iv) reasonable rental for any real or personal property leased to the Trustee as trustee of the Trust;

(v) reasonable remuneration of any other person (including any member, director, employee, agent or officer of the Trustee) for services provided to the Trustee as trustee of the Trust.

2.5 No Fixed Interests

(a) The Eligible Noongar Entities have a right to be considered for a Distribution from the Trust Fund as conferred by this Deed but do not have any interest in any particular part of the Trust Fund or any investment made by the Trustee.

(b) An Eligible Noongar Entity or Noongar Person is not entitled, other than as expressly provided, to:

(i) interfere with the exercise or non-exercise by the Trustee of its rights and powers;

(ii) exercise any rights, powers or privileges in respect of any assets of the Trust Fund; or

(iii) require the transfer of any of the assets of the Trust Fund to an Eligible Noongar Entity or Noongar Person.

3. Noongar Community

3.1 Recognition of Noongar Community

In exercising the Trustee's discretions pursuant to this Deed, and subject to clauses 22.1 and 22.4, the Trustee must have regard to:

(a) the fundamental connection between the Trust Fund and the Agreement Groups and that the primary source of the Trust Fund is the settlement between the Noongar Community and the State whereby native title rights and interests are dealt with in the manner envisaged in subsections 24CB(e) and 24EB(1)(d) of the Native Title Act, pursuant to the ILUAs;

(b) the connection between the Agreement Groups and the Regions,

and may rely upon the terms of the ILUAs for the purpose of determining:

(c) the geographical areas that constitute the six Regions that, together, represent the Noongar Boodja Traditional Lands; and

(d) the identity of the traditional owners who hold rights and interests under Traditional Laws and Customs in relation to part or all of each Region, who together may select an entity to be their Regional Corporation for their Region, and nominate their traditional elders in respect of land within that Region.

3.2 Good Governance Practice

The Trustee must:

(a) support initiatives to improve, enhance and assist the development of the corporate governance practices of the Eligible Noongar Entities;

(b) ensure that meetings of each committee the Trustee is specifically required to form under this Deed and any other committees or subcommittees formed under this Deed, are convened (as to timing and number of meetings) and held in an efficient, responsible, cost effective and culturally appropriate manner; and

(c) in consultation with the Noongar Relationship Committee, develop, approve and update from time to time the following documents to apply to the operations of the Trustee, the Noongar Advisory Company and each committee the Trustee is specifically required to form under this Deed:

    (i) a code of conduct (**Code of Conduct**); and

    (ii) a policies and procedures manual (**Policy and Procedures Manual**).

3.3 Communications with the Noongar Community

(a) The Trustee must support the Eligible Noongar Entities to develop appropriate mechanisms for participation, consultation and information dissemination regarding the Trust within the Noongar Community, through the Eligible Noongar Entities, which shall have regard to the following non exhaustive principles:

(i) effective participation by the Noongar Community in the operation of the Eligible Noongar Entities;

(ii) decision-making by the Eligible Noongar Entities to:

A. be in accordance with the principle that decisions about land are to be made by Noongar Persons who have a right to speak for that land under Traditional Law and Custom; and

B. take into account cultural sensitivities and values;

(iii) ensuring transparency and accountability in decision making; and

(iv) ensuring the operations of the Trust are just, fair and equitable (which does not necessarily require equal Distributions).

(b) The Trustee must consult with the Noongar Community at least once in each Financial Year (excluding the first Financial Year) regarding the Trust's activities.

(c) The Trustee must seek the recommendations of the Noongar Corporations Committee regarding the manner in which the Trustee will consult with the Noongar Community under clause 3.3(b).

(d) All communications, reports, plans and other documentation required to be prepared by the Trustee that are provided to the Noongar Advisory Company, the Eligible Noongar Entities or the Noongar Community must be prepared using plain English in a culturally appropriate manner, form and style, including diagrams where appropriate.

(e) Except to the extent required by law or by this Deed or reasonably required for the performance of the Trustee's obligations under this Deed, the Trustee must withhold culturally sensitive information from all communications, reports, plans and other documentation.

3.4 Consultations and Decision Making with Eligible Noongar Entities

(a) The Trustee must seek to:

(i) develop and maintain a process for direct communications with each Eligible Noongar Entity; and

(ii) consult directly with each Eligible Noongar Entity regarding matters that relate solely to that Eligible Noongar Entity or its relevant Agreement Group or Region.

(b) Where the Trustee is required to consult with or obtain decisions from an Eligible Noongar Entity in accordance with the terms of this Deed:

(i) if the Trustee has made at least 2 attempts by notice in writing to either obtain the decision of the Eligible Noongar Entity or consult with the Eligible Noongar Entity on the matter; and

(ii) the Eligible Noongar Entity has not made a valid decision on the matter or declined to consult with the Trustee (as the case may be),

then the Trustee may act without the Eligible Noongar Entity's consent or may act without consulting with the Eligible Noongar Entity on that matter despite any clause in this Deed to the contrary.

(c) If an Eligible Noongar Entity has ceased to be a Relevant Regional Corporation under clause 4.2 at the relevant time, then the Trustee must consult with the CSC and, in doing so, sub-paragraph 3.4(b) applies.

3.5 Noongar Capacity Development

In exercising the Trustee's discretions pursuant to this Deed, the Trustee may take into consideration the Noongar Community's aspiration to develop the capacity of Noongar Persons and Noongar Community organisations, including by:

(a) supporting the CSC and Regional Corporations to identify and engage with Noongar Persons that may be suitable for employment or committee positions in relation to the Trust; and

(b) supporting the CSC and Regional Corporations to develop effective strategies that allow for and encourage capacity building, including promoting training and development within the Noongar Community, and good governance and administration of Noongar Community organisations.

3.6 Disputes

(a) In order to support and encourage the effective and efficient resolution of disputes amongst the entities associated with the Noongar Settlement, the Trustee may invoke the Dispute Resolution Procedure.

(b) For the purpose of this clause, a **Dispute** means a dispute between any two or more of the following:

(i) Regional Corporations;

(ii) CSC;

(iii) Noongar Advisory Company; and

(iv) Noongar Corporations Committee,

but does not include a dispute between any of the above parties and the Trustee.

(c) In the event of a Dispute:

(i) the parties to the Dispute may jointly give the Trustee written notice identifying the particulars of the Dispute in such form as the Trustee may prescribe (**Dispute Notice**); and

(ii) having regard to the Dispute Notice, the Trustee may invoke the Dispute Resolution Procedure.

4. Appointment of Regional Corporations

4.1 Nomination and Appointment

(a) Subject to clause 4.1(c) and on receipt of an ENE Nomination, the Trustee must if it is satisfied the nominated entity is eligible under clause 4.5, appoint the nominated entity as the Regional Corporation for a Region by an ENE Appointment Notice.

(b) If the Trustee in its absolute discretion considers that an initial Regional Corporation for a Region is unlikely to be appointed within 6 months of the date of this Deed then the Trustee may provide reasonable assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a) and nominate for appointment as the Regional Corporation for that Region.

(c) At any one time, the Trustee may only support the establishment and operation of one entity as the Regional Corporation in respect of each Region.

4.2 Ceasing to be eligible to act as Regional Corporation

(a) Where a Regional Corporation ceases to meet one or more of the eligibility requirements under clause 4.5(a) for any reason, the Trustee must:

(i) issue an ENE Default Notice which must state the:

A. reasons the Regional Corporation has ceased to meet the eligibility requirements under clause 4.5(a);

B. actions the Regional Corporation must undertake to rectify or remedy the matters giving rise to the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion; and

C. latest time by which the Regional Corporation must satisfy the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion;

(ii) as far as is practicable and in its discretion, provide assistance to the Regional Corporation, an administrator appointed under the CATSI Act to the Regional Corporation or the CSC, to enable the Regional Corporation to comply with an ENE Default Notice, with a view to avoiding the need to establish and approve a replacement Regional Corporation; and

(iii) if the Regional Corporation fails to comply with an ENE Default Notice, terminate the appointment of the Regional Corporation by issuing an ENE Termination Notice to the Regional Corporation.

(b) Where a Regional Corporation has ceased to exist and until such time as a new Regional Corporation is appointed for that Region, the Trustee may:

(i) provide reasonable assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a) and nominate for appointment as the Regional Corporation for that Region;

(ii) directly or through an entity engaged by the Trustee, perform such functions and deliver such services of a Regional Corporation as the Trustee determines in its absolute discretion is reasonably necessary to advance the vital operations of the Trust; and

(iii) in giving effect to clauses 4.2(b)(i) and 4.2(b)(ii), Apply any part of the Operations Funding (including any funds held or previously held in an ENE Operations Account or ENE Distributions Account in respect of the Relevant Regional Corporation).

4.3 Ceasing to be Eligible upon receipt of ILUA Termination Notice

Where a Relevant Regional Corporation ceases to be eligible to act as a Regional Corporation for a Region upon receipt of an ILUA Termination Notice under clause 4.5(b), the Trustee must:

(a) terminate the appointment of the Regional Corporation by issuing an ENE Termination Notice to the Regional Corporation; and

(b) take all reasonable steps to ensure that the Trustee complies with the State Contribution Condition in accordance with clause 6.4.

4.4 ENE Termination Notice

Where the Trustee has terminated the appointment of a Regional Corporation by issuing an ENE Termination Notice under clause 4.2(a)(iii) or 4.3(a), the Trustee must:

(a) cease to maintain the ENE Operations Account for the Relevant Regional Corporation in accordance with clause 8.3(f);

(b) suspend payment of all Distributions to the Relevant Regional Corporation in accordance with clause 17.7, and otherwise exercise the rights of the Trustee to ensure that the Relevant Regional Corporation does not receive Distributions;

(c) take all reasonable steps to ensure that:

(i) the Relevant Regional Corporation's representatives do not participate in the Noongar Relationship Committee in accordance with clause 15.7;

(ii) any interest in Cultural Land granted to the Relevant Regional Corporation terminates and reverts back to the Trustee in accordance with clause 10.3(d); and

(iii) any Special Projects Funding that has not been used by the Relevant Regional Corporation will be repaid to the Trustee in accordance with clause 9.2(e),

PROVIDED THAT the Trustee may (with prior written consent of the State) determine otherwise.

4.5 Eligibility to act as Regional Corporation

(a) Subject to clause 4.5(b), an organisation is and continues to be eligible to act as a Regional Corporation for a Region during the period that:

(i) it is an Aboriginal Corporation;

(ii) there is in place a Valid:

A. Agreement Group Endorsement;

B. State Endorsement; and

C. endorsement of the Commissioner of Taxation that the entity is an Eligible Charity (or is capable of being endorsed);

(iii) it is not suffering an Insolvency Event; and

(iv) it satisfies the requirements set out in the:

A. Regional Corporation Principles; and

B. Transition Principles (to the extent applicable).

(b) An organisation ceases to be eligible to act as a Regional Corporation for a Region on the day the Trustee receives an ILUA Termination Notice with respect to the relevant Agreement Group of that Region.

4.6 Regional Corporation Core Functions

(a) In order to qualify for a Distribution of Operations Funding each Financial Year, the Trustee must be satisfied that a Regional Corporation is in a position to offer and deliver the Regional Corporation Core Functions in accordance with Schedule 3.

(b) Subject to clause 4.6(a) and having regard to the Annual Budget and the Annual ENE Allocation, the Trustee must Distribute Operations Funding to a Regional Corporation each Financial Year that in the opinion of the Trustee is sufficient to enable the Regional Corporation to offer and deliver the Regional Corporation Core Functions during that Financial Year in accordance with the requirements in Schedule 3.

4.7 Regional Corporation Special Purpose Report

(a) Subject to clause 4.7(c), the Trustee may require a Special Purpose Report from the Regional Corporation, at the Regional Corporation's cost, in respect of a Financial Year.

(b) The Special Purpose Report must include:

(i) the Regional Corporation's activities for the previous Financial Year;

(ii) details of the services provided by the Regional Corporation to the

Noongar Community in the Region in the previous Financial Year;

(iii) information as to how the funds received by the Regional Corporation from the Trust were used to advance the objects of the Regional Corporation and the Trust Purpose;

(iv) details of all Special Projects undertaken by the Regional Corporation in the previous Financial Year and whether or not those Special Projects have been completed;

(v) a statement from the Regional Corporation regarding the Regional Corporation's expenditure as against the Regional Corporation's budget for the previous Financial Year and, to the extent the expenditure exceeded the budget, a report on the steps that will be taken to reduce the Regional Corporation's expenditure; and

(vi) a copy of the Regional Corporation's financial statements for the previous Financial Year.

(c) The Trustee may rely on the Regional Corporation's audited annual reports that, in the Trustee's reasonable opinion, adequately address the matters in clause 4.7(b).

5. Appointment of CSC

5.1 Nomination and Appointment

(a) Subject to clause 5.1(c) and on receipt of an ENE Nomination, the Trustee must if it is satisfied that the nominated entity is eligible under clause 5.4, appoint the nominated entity as the CSC by an ENE Appointment Notice.

(b) If the Trustee in its absolute discretion considers that an initial CSC is unlikely to be appointed within 6 months of the date of this Deed then until such time as a CSC is appointed (**Interim Period**):

(i) the Trustee may establish or support an entity in its endeavours to meet the eligibility requirements in clause 5.4 and to nominate for appointment as the CSC;

(ii) in order to advance the vital operations of the Trust:

A. the Trustee may with the consent of the State appoint an entity as the **Interim CSC**;

B. the Interim CSC will exercise such functions and deliver such services of the CSC as the Trustee in its absolute discretion determines, including facilitating the Noongar Corporations Committee;

C. the Trustee can meet its obligations under the Trust Deed to consult with or obtain the consent of the CSC, by consulting with and obtaining the consent of the Noongar Advisory Company; and

D. the Trustee may Apply any part of the Operations Funding in giving effect to this clause 5.1(b)(ii).

(c) At any one time, the Trustee may only support the establishment and operation of one entity as the CSC.

5.2 Ceasing to be eligible to act as CSC

(a) Where the CSC ceases to meet one or more of the eligibility requirements in clause 5.4 for any reason, the Trustee must:

(i) issue an ENE Default Notice which must state the:

A. reasons the CSC has ceased to meet the eligibility requirements under clause 5.4;

B. actions the CSC must undertake to rectify or remedy the matters giving rise to the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion; and

C. latest time by which the CSC must satisfy the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion;

(ii) as far as is practicable and in its discretion, provide assistance to the CSC or an administrator appointed under the CATSI Act to the CSC to enable the CSC to comply with an ENE Default Notice, with a view to avoiding the need to establish and approve a replacement CSC; and

(iii) if the CSC fails to comply with an ENE Default Notice, terminate the appointment of the CSC by issuing an ENE Termination Notice to the CSC.

(b) Where the CSC has ceased to exist and until such time as a new CSC is appointed, the Trustee may:

(i) provide reasonable assistance to the Agreement Groups (including through their Regional Corporations) to establish or support an entity in its endeavours to meet the eligibility requirements in clause 5.4 and to nominate for appointment as the CSC;

(ii) directly or through an entity engaged by the Trustee, perform such functions and deliver such services of the CSC as the Trustee determines in its absolute discretion is reasonably necessary to advance the vital operations of the Trust;

(iii) in giving effect to clauses 5.2(b)(i) and 5.2(b)(ii), Apply any part of the Operations Funding (including any funds held or previously held in an ENE Operations Account or ENE Distributions Account in respect of the CSC); and

(iv) meet its obligations under the Trust Deed to consult with or obtain the consent of the CSC, by consulting with and obtaining the consent of the Noongar Advisory Company.

5.3 ENE Termination Notice

Where the Trustee has terminated the appointment of the CSC by issuing an ENE Termination Notice under clause 5.2(a)(iii), the Trustee must:

(a) cease to maintain the ENE Operations Account for the CSC in accordance with clause 8.3(f);

(b) suspend payment of all Distributions to the CSC in accordance with clause 17.7, and otherwise exercise the rights of the Trustee to ensure that the CSC does not receive Distributions;

(c) take all reasonable steps to ensure that:

(i) the CSC's representatives do not participate in the Noongar Relationship Committee in accordance with clause 15.7; and

(ii) any Special Projects Funding that has not been used by the CSC will be repaid to the Trustee in accordance with clause 9.2(e),

PROVIDED THAT the Trustee may (with prior written consent of the State) determine otherwise.

5.4 Eligibility to act as CSC

An organisation is and continues to be eligible to act as the CSC during the period that:

(a) it is an Aboriginal Corporation;

(b) there is in place a Valid:

(i) State Endorsement;

(ii) endorsement of the Commissioner of Taxation that the entity is an Eligible Charity (or is capable of being endorsed); and

(iii) endorsement from a majority of the Regions which must comprise in respect of each Region:

A. written endorsement of the Relevant Regional Corporation; or

B. where there is no Relevant Regional Corporation, an Agreement Group Endorsement from the relevant Agreement Group;

(c) it is not suffering an Insolvency Event; and

(d) it satisfies the requirements set out in the:

(i) CSC Principles; and

(ii) Transition Principles (to the extent applicable).

5.5 CSC Services

(a) In order to qualify for a Distribution of Operations Funding each Financial Year, the Trustee must be satisfied that the CSC is in a position to deliver the CSC Core Services, and to offer and deliver the CSC Regional Services to the Regional Corporations in accordance with Schedule 2.

(b) Subject to clause 5.5(a) and having regard to the Annual Budget and the Annual ENE Allocation, the Trustee must Distribute Operations Funding to the CSC each Financial Year that in the opinion of the Trustee is sufficient to enable the CSC to:

(i) deliver the CSC Core Services; and

(ii) during the Start-Up Period, offer and deliver the CSC Regional Services to the Regional Corporations during that Financial Year in accordance with the requirements in Schedule 2.

(c) The Trustee must not Distribute Operations Funding to the CSC for the provision of the CSC Optional Services to the Regional Corporations.

5.6 CSC Special Purpose Report

(a) Subject to clause 5.6(c), the Trustee may require a Special Purpose Report from the CSC, at the CSC's cost, in respect of a Financial Year.

(b) The Special Purpose Report must include:

(i) the CSC's activities for the previous Financial Year;

(ii) details of the CSC Core Services provided by the CSC to or on behalf of the Noongar Community in the previous Financial Year;

(iii) details of the CSC Regional Services provided by the CSC to each of the Regional Corporations in the previous Financial Year;

(iv) details of the CSC Optional Services provided by the CSC to each of the Regional Corporations and the Noongar Community in the previous Financial Year;

(v) a statement from the CSC regarding the CSC's expenditure as against the CSC's budget for the previous Financial Year and, to the extent the expenditure exceeded the budget, a report on the steps that will be taken to reduce the CSC's expenditure; and

(vi) a copy of the CSC's financial statements for the previous Financial Year.

(c) The Trustee may rely on the CSC's audited annual reports that, in the Trustee's reasonable opinion, adequately address the matters in clause 5.6(b).

6. Trust Fund

6.1 Meaning of Trust Fund

(a) **Trust Fund** means:

(i) the Settled Sum;

(ii) all Contributions, interests in land and Management Orders paid or transferred to and accepted by the Trustee as additions to the Trust Fund;

(iii) all accretions to the Trust Fund;

(iv) all accumulations of income; and

(v) the money, investments, property, interests in land and Management Orders from time to time representing the above or into which they are converted,

and includes any Sub Fund and any part of the Trust Fund.

(b) The State will make the **State Contribution** and transfer the Noongar Land Estate to the Trust Fund in accordance with the ILUAs and the Trustee agrees to accept the State Contribution and the Noongar Land Estate as part of the Trust Fund for the Trust Purpose and subject to the **State Contribution Condition**.

(c) With the Trustee's consent, any Contributions, interests in land and Management Orders may be paid or transferred to, vested in and accepted by the Trustee as an addition to the Trust Fund and are to be held by the Trustee as part of the Trust Fund.

6.2 Trust Sub Funds

In accordance with clause 6.3, the Trustee must establish the following Sub Funds to hold that part of the State Contribution identified in the ILUAs for contribution to the relevant Sub Funds:

(a) **Noongar Future Fund**, administered in accordance with clause 7;

(b) **Operations Fund**, administered in accordance with clause 8;

(c) **Cultural Land Fund**, administered in accordance with clause 10;

(d) **Development Land Fund**, administered in accordance with clause 11; and

(e) **Housing Land Fund**, administered in accordance with clause 12.

6.3 Sub Fund Administration

(a) In addition to the Sub Funds established under clause 6.2, the Trustee:

(i) must establish the **Special Projects Fund**, administered in accordance with clause 9; and

(ii) may in the Trustee's absolute discretion, establish a Sub Fund for any part of the Trust Fund and may determine a name for any Sub Fund for ease of management and identification provided that the Sub Fund:

A. is held and Applied by the Trustee at the sole discretion of the Trustee and exclusively for the Trust Purpose in accordance with the provisions of this Deed; and

B. forms part of the Trust Fund and does not form a separate fund.

(b) Any Sub Fund vested in or established by the Trustee forms part of the Trust Fund but, for the purposes of identification only, the Trustee may maintain separate management accounts for each Sub Fund, its income, any payments and the application of its income or capital.

(c) The Trustee must compile separate reports and audited accounts for each of the Sub Funds in a similar manner and at least in the same detail required for the Trust Fund.

6.4 State Contribution Condition and Charge

(a) The Trustee accepts the State Contribution subject to the condition (**State Contribution Condition**) that the Trustee will be required to repay any ILUA Termination Amount or any amount payable under an Indemnified Amount Notice to the State in the circumstances set out in clause 6.4(b), in accordance with the terms set out in clauses 6.4(c) – 6.4(h).

(b) If the Trustee receives:

(i) an ILUA Termination Notice at any time prior to the Conditional Period Expiry Date it will, by no later than the date that is 120 days after receipt (or if that date is not a Business Day, the next succeeding Business Day) pay to the State an amount (represented by cash or property) equal to the ILUA Termination Amount specified in that notice; or

(ii) an Indemnified Amount Notice at any time it will, by no later than 120 days after receipt (or if that date is not a Business Day, the next succeeding Business Day) pay to the State an amount (represented by cash or property) equal to the amount payable under the Indemnified Amount Notice.

(c) Payments of cash made to the State under this clause 6.4 must be made in immediately available funds by 12 noon on the due date to the account of the State specified in the ILUA Termination Notice or Indemnified Amount Notice.

(d) The Trustee acknowledges that there can be more than one ILUA Termination Notice or Indemnified Amount Notice on issue at any one time or from time to time.

(e) The Trustee is not bound to enquire whether or not any ILUA Termination Notice was served in accordance with the terms of the Relevant ILUA (however this does not limit the Trustee's discretion to do so).

(f) Subject to the Trustee's right of indemnity under clause 22.7, the Trustee's obligations under this clause 6.4 are unconditional and irrevocable and the Trustee will be bound to comply with those obligations despite any instructions to the contrary from any person which is or purports to be an Eligible Noongar Entity.

(g) In support of its obligations under this clause 6.4, the Trustee must within 60 days of the date of this Trust Deed, or such other time as agreed in writing with the State, grant a security interest over its right title and interest in the Noongar Future Fund and the Operations Fund in favour of the State in a form acceptable to the State in its absolute discretion.

(h) The security interest pursuant to clause 6.4(g) must be expressed to be released automatically on the Conditional Period Expiry Date with respect to an ILUA Termination Amount, however it will not be released on the Conditional Period Expiry Date with respect to an amount payable under an Indemnified Amount Notice.

6.5 Role of the State

In accordance with the ILUAs, the State and the Agreement Groups have various rights and obligations to each other that relate to the Trust. The Trustee recognises the special role of the State in relation to the Trust and in particular that:

(a) the Trustee must obtain the State's prior written **consent** in relation to the following matters:

(i) upon the issue of an ENE Termination Notice, determining whether the matters contained in clauses:

A. 4.4(a) – (c) will apply to the Relevant Regional Corporation; or

B. 5.3(a) – (c) will apply to the CSC;

(ii) Modifying the Future Fund Capital Base under clause 7.4;

(iii) accessing the Future Fund Capital Base under clause 7.5;

(iv) accessing the income or capital of the Noongar Future Fund under clause 7.2(b);

(v) appointing a Dedicated Trustee under clause 13;

(vi) approving that the Noongar Advisory Company is not required where the Trustee is a Dedicated Trustee under clause 14.3(a);

(vii) Modifying the Funding Guidelines under clause 17.11(d);

(viii) determining the minimum percentage of the State Contribution to the Operations Fund available for allocation to the Regional Corporations under clause 18.3(d)(vi);

(ix) Modifying this Deed under clause 27(c);

(x) winding up or terminating the Trust under clause 28.3(a)(ii); and

(xi) applying any assets of the Trust Fund following winding up under clause 28.3(b)(ii); and

(b) the Attorney-General, as one of the Appointors, must act jointly with the Noongar Appointor to appoint and remove the Trustee as provided in clause 13.4 of this Deed.

7. Noongar Future Fund

7.1 General Purpose of the Noongar Future Fund

(a) In accordance with clause 6.2 the Trustee must establish a Sub Fund of the Trust Fund to be called the Noongar Future Fund to be administered in accordance with this clause 7 and otherwise in accordance with this Deed.

(b) The general purpose of the Noongar Future Fund is to grow the capital of the Noongar Future Fund to achieve and then maintain a sustainable capital value (**Future Fund Capital Base**) in order that the income of the Noongar Future Fund may be applied towards the Trust Purpose, in perpetuity, including but not limited to the Operations Fund.

7.2 Accumulation during State Contribution Period

(a) During the State Contribution Period and subject to clause 7.2(b), the Trustee must accumulate and hold in the Noongar Future Fund:

(i) all of the State Contributions from time to time that are received by the Trustee specifically for allocation to the Noongar Future Fund in accordance with the ILUAs;

(ii) such other money, property or benefits received by the Trustee that the Trustee determines to hold in the Noongar Future Fund; and

(iii) all of the income (including any realised capital gains) of the Noongar Future Fund.

(b) The Trustee may Distribute the income or capital of the Noongar Future Fund during the State Contribution Period:

(i) for payment of the Trustee's remuneration or reasonable costs and expenses under clause 23 relating to the Noongar Future Fund; or

(ii) if the Trustee determines that it is in the best interests of the Trust, having regard to the Trust Purpose and with the consent of the:

A. Noongar Advisory Company;

B. Noongar Relationship Committee;

C. Investment Committee; and

D. State.

7.3 Distributions after the State Contribution Period

In respect of each Financial Year following the State Contribution Period, the Trustee may, subject to clause 7.5, transfer so much of the income or capital of the Noongar Future Fund that exceeds the Future Fund Capital Base for that Financial Year to the Operations Fund or Special Projects Fund for Distribution by the Trustee in accordance with clause 17.

7.4 Future Fund Capital Base

(a) The Future Fund Capital Base for the first Financial Year commencing after the end of the State Contribution Period is 90% of the total value of the Future Fund as at the end of the State Contribution Period.

(b) The Future Fund Capital Base must be adjusted at the end of each Financial Year from the end of the State Contribution Period by multiplying the Future Fund Capital Base at the end of the previous Financial Year by the current Consumer Price Index for that Financial Year and dividing it by the Consumer Price Index of the previous Financial Year.

(c) Having regard to clause 7.1, the Trustee may Modify the Future Fund Capital Base if the Trustee determines it is in the best interests of the Trust having regard to the Trust Purpose and:

(i) in consultation with the:

A. Noongar Relationship Committee;

B. Investment Committee; and

C. Noongar Advisory Company;

(ii) with the consent of the State; and

(iii) provided that the details of the Modified Future Fund Capital Base are provided to the:

A. Noongar Relationship Committee;

B. Investment Committee;

C. State; and

D. Noongar Advisory Company.

7.5 Restricted Access to Future Fund Capital Base after State Contribution Period

Having regard to clause 7.1, and subject to clause 7.4, the Trustee must not Distribute the Future Fund Capital Base unless the Trustee determines that it is in the best interests of the Trust, having regard to the Trust Purpose and with the consent of the:

(a) Noongar Advisory Company;

(b) Noongar Relationship Committee;

(c) Investment Committee; and

(d) State.

7.6 Investment of Noongar Future Fund

The Trustee may only invest the Noongar Future Fund in accordance with the Investment Policy or Default Investment Policy having regard to the general purpose

of the Noongar Future Fund as set out in clause 7.1 and the borrowing restrictions set out in Schedule 5(e).

7.7 Management Account for Sub Funds

For the purpose of identification only, the Trustee may maintain separate management accounts within the Noongar Future Fund in order to identify State Contributions made in connection with the ILUAs from other funds received by the Trustee from time to time.

8. Operations Fund

8.1 General Purpose of the Fund

(a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Operations Fund to be administered in accordance with this clause 8 and otherwise in accordance with this Deed.

(b) The Operations Fund is to be held and managed by the Trustee:

(i) for the purpose of providing funding to the Eligible Noongar Entities to ensure they are adequately resourced to pursue their constitutional objects and achieve their goals set out in annual plans; and

(ii) in such a way that the Trustee is in a position to provide funding to the Eligible Noongar Entities in perpetuity, recognising that the Trust Fund is intended to benefit both current and future generations of the Noongar Community through the successful operations of the Eligible Noongar Entities.

8.2 General Rules

(a) The Operations Fund may be Distributed by the Trustee only for Operations Funding.

(b) **Operations Funding** comprises:

(i) funding available for contributing towards the operational and administrative expenditure of the Eligible Noongar Entities, being the expenditure reasonably budgeted by an Eligible Noongar Entity to pursue its constitutional objects including the expenditure associated with the Eligible Noongar Entity's compliance with the ILUA;

(ii) in the case of the CSC, the expenditure reasonably budgeted for the purpose of providing the CSC Core Services and, during the Start-Up Period, CSC Regional Services (regardless of whether all of the CSC Regional Services are used by all of the Regional Corporations); and

(iii) in the case of the Regional Corporations, the expenditure reasonably budgeted for the purpose of providing the Regional Corporation Core Functions.

8.3 ENE Operations Account

(a) The Trustee must establish and maintain a management account within the Operations Fund in respect of each Eligible Noongar Entity (**ENE Operations Account**) provided that each ENE Operations Account:

(i) is held and applied by the Trustee at the sole discretion of the Trustee and exclusively for the Trust Purpose in accordance with the provisions of this Deed;

(ii) forms part of the Trust Fund and does not form a separate fund; and

(iii) may be named by the Trustee so as to identify the ENE Operations Account with the relevant Eligible Noongar Entity.

(b) When exercising the Trustee's discretion to make a Distribution under clause 17, Distributions of Operations Funding to an Eligible Noongar Entity must only be sourced from the relevant ENE Operations Account, except where clauses 4.2(b)(iii) or 5.2(b)(iii) apply.

(c) Where at the end of a Financial Year there are funds remaining in an ENE Operations Account, those funds will accumulate in that ENE Operations Account and are otherwise held in accordance with this clause 8.3.

(d) If an Eligible Noongar Entity is removed and replaced in accordance with clauses 4 or 5 with a replacement Eligible Noongar Entity, then the ENE Operations Account identified with that Eligible Noongar Entity shall be available for Distributions to the replacement Eligible Noongar Entity.

(e) If at any time in respect of a Region there is an Agreement Group but no Relevant Regional Corporation;

(i) the Trustee may establish and maintain an ENE Operations Account with respect to that Agreement Group; and

(ii) the funds in the ENE Operations Account will accumulate and are otherwise held in accordance with this clause 8.3 to be available for future Distributions to the Relevant Regional Corporation.

(f) Where the Trustee has issued an ENE Termination Notice in respect of an Eligible Noongar Entity, the Trustee will cease to maintain the ENE Operations Account for the Eligible Noongar Entity and any funds in that ENE Operations Account will be treated as unallocated Operations Funding.

8.4 Applying for Operations Funding

(a) Applications for Distributions for Operations Funding from the Operations Fund are considered by the Trustee in its absolute discretion in accordance with clause 17 and no Eligible Noongar Entity is entitled to any guaranteed minimum annual Distribution.

(b) Distributions for Operations Funding must be made annually and paid by instalments once every 3 months except:

(i) in exceptional circumstances; and

(ii) following consultation with the Noongar Advisory Company.

9. Special Projects Fund

9.1 General Purpose of the Fund

(a) In accordance with clause 6.3, the Trustee must establish a Sub Fund of the Trust Fund to be called the Special Projects Fund to be administered in accordance with this clause 9 and otherwise in accordance with this Deed.

(b) Where the Trustee accepts a Contribution from a Contributor in accordance with clause 2.1(c), the Contribution may be held and managed in the Special Projects Fund, provided that the income or capital or both:

(i) will be held on the terms of this Deed; and

(ii) must be applied in furtherance of the Trust Purpose.

(c) The Trustee must, when administering the Special Projects Fund, have regard to the requests or recommendations of a Contributor in relation to a Contribution.

(d) The Trustee may from time to time develop:

~~(i) specific Special Projects to be funded by Distribution to one or more Eligible Noongar Entities from the Special Projects Fund; and~~

(i) specific Special Projects to be funded or delivered by Distribution to one or more Eligible Noongar Entities from the Special Projects Fund; and

(ii) principles or guidelines that apply to those Special Projects (**Special Project Guidelines**).

9.2 General Rules

~~(a) The Special Projects Fund may be Distributed by the Trustee for Special Projects Funding comprising funding of Special Projects to be undertaken by the Eligible Noongar Entities as identified:~~

~~(i) as being Special Projects that either the Eligible Noongar Entity or the Trustee have determined are outside of the Eligible Noongar Entity's usual operations or activities;~~

~~(ii) for which specific Special Project Guidelines may have been determined; and~~

(iii) ~~taking into account the factors set out in clause S1.2.3,~~

~~(**Special Projects Funding**)~~

(a) The Special Projects Fund may be Distributed by the Trustee for funding or delivery of Special Projects to be undertaken by one or more Eligible Noongar Entities:

(i) being an activity either of the Trustee or Eligible Noongar Entity has determined in its discretion should be undertaken as a Special Project

under this clause 9;

(ii) for which specific Special Project Guidelines may have been determined; and

(iii) taking into account the factors set out in clause S1.2.3,

(***Special Projects Funding***).

~~(b) The Trustee shall determine the Annual Special Projects Budget and distributions from the Special Projects Fund in its absolute discretion in accordance with clauses 17 and 18 and no Eligible Noongar Entity is entitled to any guaranteed minimum annual Distribution.~~

(b) Other than in respect of the Special Projects Funding referred to in the Special Project Guidelines dated 17 June 2025 as the Administrative Office Fund, the Trustee shall determine the Annual Special Projects Budget and distributions from the Special Projects Fund in its absolute discretion in accordance with clauses 17 and 18 and no Eligible Noongar Entity is entitled to any guaranteed minimum annual Distribution.

(c) Distributions of Special Projects Funding may be made at any time to the Eligible Noongar Entities in the Trustee's discretion.

(d) Where an Eligible Noongar Entity receives a Distribution from the Special Projects Fund, the Trustee may require that an Eligible Noongar Entity undertake the Special Project in accordance with any relevant Special Project Guidelines.

(e) Without limiting clause 9.2(d), where an Eligible Noongar Entity receives a Distribution from the Special Projects Fund, the Trustee must make that Distribution on the condition that where the Trustee has issued an ENE Termination Notice in respect of that Eligible Noongar Entity, any Special Projects Funding that has not been used by the Eligible Noongar Entity at the time of that event occurring will be repaid or returned to the Trustee.

10. Cultural Land Fund

10.1 General Purpose of the Cultural Land Fund

(a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Cultural Land Fund to be administered in accordance with this clause 10 and otherwise in accordance with this Deed.

(b) The Trustee acknowledges that the members of the Noongar Community remain the spiritual and cultural custodians of the Cultural Land and continue to practise their values, languages, beliefs and knowledge in relation to the Cultural Land.

10.2 Accepting Land into the Cultural Land Fund

(a) Subject to clause 10.2(b), at the request of an Eligible Noongar Entity or an Agreement Group, or as required under an ILUA, the Trustee may accept any estate, right or interest in land or Management Order as Cultural Land in the Cultural Land Fund in consultation with and on the recommendation of one or more Relevant Regional Corporations (if there is one).

(b) In consultation with the Noongar Advisory Company, where the Trustee accepts any estate, right or interest in land or Management Order to be held in the Cultural Land Fund, the Trustee must clearly identify:

(i) the estate, right or interest in land or Management Order that is accepted by the Trustee as Cultural Land;

(ii) the Region or Regions in which that Cultural Land is located; and

(iii) the Relevant Regional Corporation or Corporations (if any) that is acting for the relevant Agreement Group or Agreement Groups in relation to that Cultural Land,

and must give written notice of those matters to the Noongar Relationship Committee.

10.3 Holding Cultural Land

(a) Subject to clause 10.3, the Trustee may hold and manage Cultural Land in the Cultural Land Fund in consultation with and on the recommendation of one or more Relevant Regional Corporations (if there is one).

(b) The Trustee must, subject to the Title Protection Criteria and the conditions imposed by the Minister for Lands pursuant to section 46(1) of the *Land Administration Act 1997* (WA):

(i) at the request of a Relevant Regional Corporation and subject to clause 10.3(c), grant the Relevant Regional Corporation an interest over the whole or any part of the Cultural Land:

A. in the form of a lease or sublease, licence or other form of legal or equitable tenure;

B. in compliance with any applicable requirements under the *Land Administration Act 1997* (WA) and any conditions imposed by the Minister for Lands on the grant of the interest on the Trustee or on the Land Sub in the case of a Management Order; and

C. otherwise on such terms and conditions as the Trustee deems appropriate; and

(ii) otherwise hold and manage the Cultural Land:

A. in consultation with the Relevant Regional Corporation (if there is one); and

B. by exercising the Trustee's investment powers in accordance with clause 19, Schedule 5 and the Investment Policy or Default Investment Policy (as the case requires); and

(iii) prior to making any Cultural Land Development Decision in relation to Cultural Land in a Region, consult with the Relevant Regional Corporation (if there is one).

(c) In exercising its powers under clause 10.3(b) , the Trustee:

(i) may consult with and consider the recommendations of the Noongar Advisory Company; and

(ii) must be satisfied that the grantee of an interest in Cultural Land:

A. complies with the Title Protection Criteria;

B. can meet the outgoings and costs of maintaining the interest in the Cultural Land; and

C. reports to the Trustee in such form and at such times as the Trustee determines in its discretion but at least once annually.

(d) For the purposes of this clause 10.3, the **Title Protection Criteria** are:

(i) the Cultural Land must be held by the Trustee and managed in consultation with the Relevant Regional Corporation;

(ii) subject to clause 10.4, title to the Cultural Land will be held in perpetuity by the Trustee; and

(iii) any interest in the Cultural Land granted under this clause 10.3 must:

A. subject to clause 10.3(e), not be capable of alienation by sale, transfer, assignment or other disposal by the grantee of an interest in Cultural Land or be made subject to any encumbrance, mortgage, charge or other security; and

B. be granted on the condition that the interest will automatically terminate if an ENE Termination Notice is issued in respect of the Relevant Regional Corporation.

(e) Where the Trustee has granted a lease to a Regional Corporation over all or a part of Cultural Land under this clause 10.3, the Regional Corporation may, for the purposes of this clause, grant a sublease in respect of that Cultural Land. For the avoidance of doubt, the restrictions set out in clause 10.3(d)(iii)(A) do not operate to prevent or prohibit the grant of a sublease by a Regional Corporation in relation to Cultural Land that is subject to a lease granted to that Regional Corporation by the Trustee.

10.4 Conversion to Development Land

(a) Notwithstanding the provisions of this clause 10, the Trustee may reclassify Cultural Land other than land the subject of a Management Order as Development Land:

(i) only at the request of the Relevant Regional Corporation, if any;

(ii) following consultation with the Noongar Advisory Company; and

(iii) with an Agreement Group Endorsement.

(b) Upon reclassification under this clause 10.4, the reclassified Cultural Land shall be treated as Development Land pursuant to clause 1

11. Development Land Fund

11.1 General Purpose of the Development Land Fund

(a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Development Land Fund to be administered in accordance with this clause 11 and otherwise in accordance with this Deed.

(b) The **Development Land Fund** includes any interest in land accepted by the Trustee as Development Land, including:

(i) any interest in land identified in the ILUAs or by the Agreement Groups in accordance with the ILUAs, as being land that is appropriate for Property Development Activities or passive property investment activities such as leasing; and

(ii) any interest in Cultural Land that is reclassified as Development Land under clause 10.4.

(c) The Net Proceeds of Property Development Activities are returned to the Development Land Fund to be Applied by the Trustee for the Trust Purpose, having regard to clause 11.5.

(d) For the purpose of this clause 11, **Property Development Activities** means property development or redevelopment activities, commercial exploitation or sale in relation to Development Land (either sole purpose or multi purpose), but does not include passive property investment activities such as leasing.

11.2 Development Process

(a) The Trustee must hold, manage, invest and exploit the Development Land as follows:

(i) in consultation with the Investment Committee (if there is one);

(ii) by exercising the Trustee's investment powers in accordance with clause 19, Schedule 5 and the Investment Policy or Default Investment Policy (as the case requires); and

(iii) by ensuring that Property Development Activities are undertaken by one or more Noongar Boodja Development Corporations.

(b) The Trustee is not permitted to Distribute the Development Land pursuant to clause 17 or otherwise.

11.3 Consultation with Regional Corporations

(a) The Trustee:

(i) acknowledges that:

A. all Development Land forms part of the Noongar Boodja Traditional Lands associated with one or more Regions and one or more Regional Corporations;

B. all land, including Development Land, is important to the Noongar Community; and

(ii) will consult with the Relevant Regional Corporation (if there is one) at least once each Financial Year in relation to all Development Land within the Region.

(b) Prior to making any Decision to Proceed in relation to Development Land in a Region, the Trustee must consult with the Relevant Regional Corporation (if there is one).

11.4 Noongar Boodja Development Corporations

(a) Having regard to the Trust Purpose and the general purposes of the various Sub Funds, the Trustee is prohibited from undertaking Property Development Activities otherwise than by one or more separate entities.

(b) The Trustee may in consultation with the Noongar Advisory Company establish one or more Noongar Boodja Development Corporations to undertake Property Development Activities.

(c) The transfer, sale or making available of Development Land to a Noongar Boodja Development Corporation for Property Development Activities must be subject to the Investment Policy or Default Investment Policy (as the case requires) and clause 19.3(d).

11.5 Net Proceeds of Property Development Activities

(a) For the purpose of this clause, **Net Proceeds** means an amount calculated using the following formula:

GP – C = Net Proceeds

where:

GP is the gross proceeds of sale arising from the Property Development Activity; and

C means the costs and expenses of the Trustee related to the Property Development Activity (such as costs of conducting the development, agent's fees and any land tax etc.) but does not include the value of the land on which the Property Development Activity is conducted to the extent that the land is received by the Trustee as part of the Noongar Land Estate.

(b) The Trustee must allocate some or all of the Net Proceeds as follows:

(i) 10% to remain in the Development Land Fund, if the Trustee considers in its absolute discretion that it is appropriate to do so;

(ii) to the Noongar Future Fund, where the Net Proceeds of the Property Development Activities have arisen from Development Land that was accepted by the Trustee specifically for the purpose of increasing the Noongar Future Fund;

(iii) to a specific Sub Fund, where the Net Proceeds are derived from land accepted by the Trustee pursuant to clause 6.1(c) from a Contributor for a particular purpose that is consistent with the Trust Purpose and held in that same Sub Fund for that purpose pursuant to clause 6.3(a)(ii);

(iv) as the Trustee determines in consultation with the:

A. Noongar Advisory Company;

B. Noongar Relationship Committee; and

C. State, during the State Contribution Period; and

(v) where the Property Development Activity relates to land located within a Region, and unless the Trustee determines otherwise in accordance with clauses 11.5(b)(i) – (iv):

A. 10% to the ENE Operations Account for the Relevant Regional Corporation of the Region;

B. 15% to be shared equally amongst the remaining ENE Operations Accounts; and

C. 75% to the Noongar Future Fund.

12. Housing Land Fund

12.1 General Purpose of the Housing Land Fund

(a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Housing Land Fund to be administered in accordance with this clause 12 and otherwise in accordance with this Deed.

(b) The general purpose of the Housing Land Fund is for the Trustee to hold, manage, invest and develop the Housing Land in a manner that aims to achieve improved housing outcomes for the Noongar Community.

12.2 Housing Land

(a) The Housing Land Fund consists of any interest in land accepted by the Trustee to be held in the Housing Land Fund, including the ILUA Housing Properties.

(b) The Trustee must hold, manage, invest and develop the Housing Land as follows:

(i) in consultation with the Investment Committee (if there is one) and the Noongar Advisory Company;

(ii) appointing one or more suitably qualified housing management companies to manage the housing stock under an appropriate service contract;

(iii) by exercising the Trustee's investment powers in accordance with clause 19, Schedule 5 and the Investment Policy or Default Investment Policy (as the case requires); and

(iv) where the Trustee deems it appropriate, by ensuring that Housing Land Development Activities in the nature of commercial development are undertaken by one or more Noongar Boodja Development Corporations.

(c) The net proceeds of the Housing Land Development Activities must be allocated to the Housing Land Fund to be administered in accordance with clause 12 and otherwise in accordance with this Deed.

(d) **Housing Land Development Activities** means:

(i) refurbishment or redevelopment of dwellings on Housing Land;

(ii) sale or commercial exploitation of Housing Land; and

(iii) management of rental properties on Housing Land.

12.3 Consultation with Regional Corporations

(a) The Trustee acknowledges that all Housing Land forms part of the Noongar Boodja Traditional Lands associated with one or more Regions and one or more Regional Corporations.

(b) Prior to making any Decision to Proceed in relation to any interest in the Housing Land in a Region, the Trustee must consult with the Relevant Regional Corporation, if there is one.

12.4 Role of CSC in Housing Land Fund

The Trustee may engage the CSC to deliver any or all of the Housing Land Development Activities on such terms and conditions as the Trustee may agree.

13. Trustee

13.1 Initial Trustee

The first trustee of the Trust is Perpetual Trustee Company Limited.

13.2 Eligibility

13.2.1 Type of Trustee

The Trustee must be:

(a) a Professional Trustee Company during the State Contribution Period; and

(b) either a Professional Trustee Company or a Dedicated Trustee after the State Contribution Period.

13.2.2 General Requirements

The Trustee must at all times:

(a) either satisfy the requirements set out in the definition of a Professional Trustee Company or the Dedicated Trustee Requirements, as the case may be;

(b) maintain and act in accordance with a Reconciliation Action Plan that includes an Indigenous employment strategy or policy;

(c) maintain an office in Perth that is operated on a full time basis by the Trustee's employees or officers; and

(d) provide a senior executive employee or officer dedicated to the Trust on a full time basis:

(i) with appropriate skill and expertise, having regard to the value of the Trust Fund and the responsibilities of the Trustee as provided for in this Deed; and

(ii) that is otherwise objectively capable of maintaining a senior management position in a comparable organisation.

13.2.3 Additional requirements of a Dedicated Trustee

A Dedicated Trustee must:

(a) meet the Dedicated Trustee Requirements immediately prior to being appointed as Dedicated Trustee and at all times whilst acting as Dedicated Trustee;

(b) subject to clause 13.2.1(a), only be appointed at the end of a Financial Year, unless otherwise agreed with the Trustee;

(c) subject to clause 13.2.1(a), only be appointed as Dedicated Trustee not less than 2 years after being proposed by the Noongar Corporations Committee; and

(d) at all times whilst in office as the Dedicated Trustee, appoint a Professional Trustee Company as Custodian Trustee in accordance with Schedule 10.

13.2.4 Transition to a Dedicated Trustee

If the Trustee is a Professional Trustee Company and the Trustee receives a written request from the Noongar Corporations Committee at any time being at least 9 years after the commencement of the Trust, the Trustee must:

(a) in consultation with the Noongar Corporations Committee, assist the Noongar Community to establish or select an entity to be a Nominee Entity and assist that Nominee Entity to meet the Dedicated Trustee Requirements;

(b) in consultation with the Noongar Corporations Committee and the Nominee Entity, prepare an implementation plan for the Nominee Entity to become a Dedicated Trustee;

(c) identify, train and otherwise engage with appropriate members of the Noongar Community as may be identified by the Noongar Corporations Committee, to assist those persons to meet the requirements to become directors or employees of the Dedicated Trustee;

(d) consider funding and supporting the Nominee Entity during the transition process;

(e) convene and hold quarterly briefing meetings between the Trustee and the Nominee Entity for the purpose of informing the Nominee Entity about the operations of the Trust and assisting the Nominee Entity to understand and gain experience in the functions of the Trustee;

(f) obtain the prior written consent of the State for the Nominee Entity to be appointed as Dedicated Trustee;

(g) notify the Appointors when the Trustee considers that the Nominee Entity has met the Dedicated Trustee Requirements; and

(h) assist with an effective transition of the Nominee Entity to a Dedicated Trustee.

13.3 Appointors

(a) The Appointors are the following persons, acting jointly:

(i) the Attorney General; and

(ii) a person appointed from time to time in writing by the Noongar Corporations Committee (**Noongar Appointor**).

(b) The Noongar Corporations Committee must appoint a person as the Noongar Appointor within 3 months of that position becoming vacant, failing which the Noongar Advisory Company may do so.

(c) The Trustee is entitled to rely on a document signed by the chairperson of the Noongar Corporations Committee as evidence of the appointment of the Noongar Appointor.

13.4 Appointment and Removal of Trustee

(a) Subject to this clause 13.4, the Appointors, acting jointly, shall have the power by instrument in writing at any time to:

(i) remove the Trustee;

(ii) appoint any additional Trustee or Trustees that complies with the qualifications described in clause 13.2; and

(iii) appoint a new Trustee or Trustees that complies with the qualifications described in clause 13.2 in the place of any Trustee who resigns or ceases to be a Trustee by operation of law.

(b) Before exercising the Appointors' powers in clause 13.4(a), the Appointors must consult with the:

(i) Noongar Advisory Company; and

(ii) existing Trustee.

(c) Upon receipt of a notice from the Trustee pursuant to clause 13.2.4(g), the Appointors must:

(i) assess, acting reasonably, whether the Nominee Entity meets the Dedicated Trustee Requirements; and

(ii) provide the Nominee Entity with written reasons sufficient to enable the Nominee Entity to identify and remedy those matters preventing its appointment, if the Appointors elect not to appoint a Nominee Entity as Dedicated Trustee.

(d) Before the Appointors remove a Trustee, the Appointors must consider, in their absolute discretion, whether the Trustee has breached or has failed to act satisfactorily in accordance with this Deed.

(e) At the request of the Appointors, or where the Trustee wishes to resign, the Trustee must conduct an appropriate selection process for a replacement trustee in consultation with the Noongar Advisory Company and the Appointors.

(f) If at any time there is no Trustee, the Appointors must conduct the selection process for a replacement trustee in consultation with the Noongar Advisory Company.

(g) Upon exercise of the Appointors' powers above, incoming and outgoing trustees must execute a Deed of Appointment substantially in the form set out in Schedule 8, subject to any amendments necessary if the Trustee resigns or ceases to be a Trustee by operation of law.

13.5 Trustee ceasing to meet requirements

(a) A "**Notifiable Event**" for the purposes of this clause occurs if the Trustee:

(i) ceases to satisfy one or more of the eligibility requirements in clause 13.2 for a Professional Trustee Company or Dedicated Trustee (as the case requires); or

(ii) suffers an Insolvency Event.

(b) Any of the following may notify the Appointors in writing if they reasonably believe a Notifiable Event has occurred in relation to the Trustee, together with sufficient written details of the Notifiable Event (**Notifiable Event Notice**):

(i) the Noongar Advisory Company;

(ii) the Noongar Corporations Committee; and

(iii) the State.

(c) Upon receipt of a Notifiable Event Notice, the Appointors must engage an Expert who is Independent to promptly investigate the alleged Notifiable Event and prepare a written report (**Notifiable Event Report**) which must contain:

(i) a conclusion as to whether a Notifiable Event has occurred;

(ii) the specific action required by the Trustee to rectify or remedy the circumstances that gave rise to the Notifiable Event; and

(iii) a reasonable deadline by which the Trustee must complete any such action, which must not be less than 7 days or greater than 60 days from the date of the Notifiable Event Report.

(d) The Appointors must provide a copy of the Notifiable Event Report to the Trustee as soon as possible after it is completed.

(e) If the Trustee fails to complete the appropriate action by the deadline in accordance with the Notifiable Event Report, the Appointors must meet within 7 days of the due date for that action to consider removing the Trustee pursuant to clause 13.4.

(f) The Trustee must provide full cooperation and full disclosure to facilitate the Notifiable Event Report.

14. Noongar Advisory Company

14.1 Establishment and Support

Subject to clause 14.3:

(a) the Trustee must establish a wholly owned subsidiary of the Trust having a constitution in substantially the same form as the draft in Schedule 13 (**Noongar Advisory Company**) to undertake the functions specified in this Deed; and

(b) the Trustee must reasonably support and develop the Noongar Advisory Company to ensure, as far as practicable, that it is capable of fulfilling the purposes for which it is established.

14.2 Noongar Advisory Company Functions

The functions of the Noongar Advisory Company are:

(a) **General**:

(i) assisting the Trustee to manage its relationship with, and to liaise with, the Noongar Community, the Noongar Corporations Committee, the CSC and the Regional Corporations;

(ii) fostering mutual respect and cooperation between the Trustee, the Noongar Community, the CSC and the Regional Corporations;

(iii) making recommendations to the Trustee as to the fulfilment by the Trustee of the Trust Purpose and terms of this Deed generally;

(b) **Specific**:

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

(i) considering an Eligible Noongar Entity's performance;

(ii) accepting Contributions into the Trust Fund;

(iii) accessing the income or capital of the Future Fund under clause 7.2(b)

(iv) Modifying the Future Fund Capital Base under clause 7.4(c);

(v) Distributing capital of the Noongar Future Fund under clause 7.5;

(vi) appointing and removing the Trustee under clause 13.4(b);

(vii) determining the selection process for a replacement trustee under clause 13.4(e);

(viii) consulting with the Noongar Relationship Committee on matters relating to the CSC and Regional Corporations under clause 15.2(a)(v);

(ix) appointing representatives to the Noongar Relationship Committee under clause 15.3(a);

(x) determining the Annual Budget and Annual ENE Allocation under clause 18.2(a);

(xi) reviewing and Modifying the Investment Policy under clause 19.5;

(xii) appointing representatives of the Nominations Committee and Investment Committee;

(xiii) formulating and reviewing the Strategic Plan under clauses 21.2 and 21.3;

(xiv) preparing the Trustee Expense Budget under clause 23.3;

(xv) undertaking a strategic review of the Trust under clause 26;

(xvi) establishing any Eligible Noongar Entity, Noongar Boodja Development Corporation or other fund, authority, institution, company, society, association or trust in furtherance of the Trust Purpose;

(xvii) Modifying this Deed under clause 27(b);

(xviii) winding up or terminating the Trust under clause 28.3(a)(i); and

(xix) applying any assets of the Trust Fund following winding up under clause 28.3(b)(i);

(c) **Land**:

making recommendations to or consulting with the Trustee regarding the following matters:

(i) matters relating to, connected with or arising out of a specific Region, the Relevant Regional Corporation, Agreement Group or Noongar Boodja Traditional Lands of that Region;

(ii) holding land in the Cultural Land Fund as contemplated under clause 10.3(c);

(iii) identifying the Region and Relevant Regional Corporation to which Cultural Land relates under clause 10.2(b);

(iv) reclassifying Cultural Land as Development Land under clause 10.4(a);

(v) establishing a Noongar Boodja Development Corporation to undertake Property Development Activities under clause 11.4(b); and

(vi) considering the allocation of Net Proceeds from Property Development Activities in relation to Development Land under clause 11.5;

(d) **Funding**:

making recommendations to or consulting with the Trustee regarding the

following matters:

(i) considering Distributions to an Eligible Noongar Entity from the Operations Fund in exceptional circumstances under clause 8.4(b);

(ii) considering applications for Distributions from Eligible Noongar Entities under clause 17.4;

(iii) placing conditions for the release of Distributions to Eligible Noongar Entities under clause 17.5; and

(iv) Modifying Funding Guidelines under clause 17.11; and

(e) where there is no CSC, consulting with or providing consent to the Trustee under clauses 5.1(b)(ii)C and 5.2(b)(iv).

14.3 Where Trustee is a Dedicated Trustee

(a) During any time where the Trustee is a Dedicated Trustee and subject to the written approval of the State and the Noongar Relationship Committee (which may be subsequently revoked), there is no requirement for the Noongar Advisory Company and the functions of the Noongar Advisory Company will be assumed by the Dedicated Trustee.

(b) If the approval referred to in clause 14.3(a) is not provided or is subsequently revoked, clauses 14.1 and 14.2 will apply.

15. Noongar Relationship Committee

15.1 General Purpose of the Noongar Relationship Committee

The general purpose of the Noongar Relationship Committee is to facilitate and streamline a process for the Trustee and the Noongar Advisory Company to have direct, regular and meaningful engagement with the Eligible Noongar Entities.

15.2 Functions

The Trustee must facilitate the establishment of the Noongar Relationship Committee with the following functions:

(a) **General**:

(i) providing a forum for review of the nature and delivery of CSC Regional Services and CSC Optional Services;

(ii) providing a forum for the CSC to review and implement a service agreement with each Regional Corporation relating to the CSC Regional Services and CSC Optional Services (if any);

(iii) monitoring the Eligible Noongar Entities' compliance with the service agreements;

(iv) supporting general administrative and operational matters between the Trustee, CSC and Regional Corporations;

(v) consulting with the Trustee or Noongar Advisory Company on matters relating to the CSC and Regional Corporations generally;

(vi) reviewing the Trustee's compliance with its obligations under this Deed, and providing recommendations to the Trustee as to how those obligations may be met;

(vii) providing guidance to the Trustee regarding its dealings with the Traditional Laws and Customs relevant to the Noongar Community; and

(viii) providing such other general functions that the Trustee may consider appropriate from time to time;

(b) **Specific**:

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

(i) developing, approving and updating the Code of Conduct and Policies and Procedures Manual under clause 3.2(c);

(ii) accessing the income or capital of the Noongar Future Fund under clause 7.2(b);

(iii) Modifying the Future Fund Capital Base under clause 7.4(c);

(iv) Distributing the Future Fund Capital Base under clause 7.5;

(v) considering the allocation of net proceeds from Property Development Activities in relation to Development Land under clause 11.5.

(vi) consulting with the Noongar Advisory Company on matters relating to the CSC and Regional Corporations under clause 15.2(a)(v);

(vii) appointing representatives on the Nominations Committee under clause 16.3(a);

(viii) preparing the Trustee Expense Budget under clause 23.3;

(ix) undertaking a strategic review of the Trust under clause 26; and

(x) Modifying this Deed under clause 27(b).

15.3 Composition

The Noongar Relationship Committee must comprise up to 17 persons consisting of:

(a) 3 directors of the Noongar Advisory Company nominated by the Noongar Advisory Company consisting of:

(i) 1 director nominated by the Trustee;

(ii) 1 Independent director;

(iii) 1 director being an Expert representative of the Noongar Community; and

(b) the members of the Noongar Corporations Committee.

15.4 Meetings and Decision Making

(a) Decisions of the Noongar Relationship Committee will be determined and their meetings will be carried out in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.

(b) The Noongar Relationship Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.

(c) The Trustee acknowledges that the CSC and Regional Corporations will convene the Noongar Corporations Committee without the Noongar Advisory Company representatives to address issues as between the CSC and the Regional Corporations that do not relate to the Trustee or the Noongar Advisory Company.

15.5 Term of appointment

A person will continue to be a member of the Noongar Relationship Committee until the earlier of the date on which the person:

(a) resigns;

(b) dies;

(c) becomes mentally incapacitated;

(d) in the case of a member referred to in clause 15.3(a), has their nomination for appointment revoked by the relevant body or committee which nominated them in accordance with clause 15.3(a);

(e) in the case of a member referred to in clause 15.3(b), ceases to be a member of the Noongar Corporations Committee; or

(f) is removed as a member in accordance with clause 15.6 or 15.7.

15.6 Removing Noongar Relationship Committee members

(a) The Noongar Relationship Committee may by resolution remove one of its members if the person:

(i) fails to attend 3 consecutive Noongar Relationship Committee meetings without reasonable excuse; or

(ii) does an act or omission that the Noongar Relationship Committee reasonably considers is a serious breach of the Code of Conduct or Policy and Procedures Manual.

(b) A person removed under this clause 15.6 is ineligible for reappointment as a member of the Noongar Relationship Committee.

15.7 Withdrawal from the Noongar Relationship Committee

Where the Trustee has issued an ENE Termination Notice in respect of an Eligible Noongar Entity, the representatives of the relevant Eligible Noongar Entity are automatically removed as members of the Noongar Relationship Committee.

16. Nominations Committee

16.1 General Purpose of the Nominations Committee

(a) The general purpose of the Nominations Committee is to facilitate and streamline the process of selecting and securing candidates for positions as directors and committee members in respect of this Trust and the Eligible Noongar Entities.

(b) Directors of the Noongar Advisory Company and a Dedicated Trustee must be certified as eligible by the Nominations Committee in accordance with this clause 16.

(c) The Nominations Committee must only act upon a direct instruction from the Trustee (which may be made upon request to the Trustee from an Eligible Noongar Entity).

16.2 Functions

The Trustee must facilitate the establishment of a Nominations Committee with the following functions:

(a) calling for nominations for appointment to the relevant boards and committees;

(b) specifying the form in which applications must be made;

(c) considering applications for appointment and interviewing candidates and referees;

(d) making inquiries and investigations to confirm the eligibility of candidates for the relevant boards or committees of the Trust or Eligible Noongar Entities as the case may be;

(e) making recommendations only to the Trustee or other relevant entity for appointments, including positions caused by casual vacancies;

(f) acting as soon as possible upon receiving an instruction from the Trustee; and

(g) creating a transparent and fair process for applicants and incumbent officeholders to apply for positions.

16.3 Composition

(a) The Nominations Committee must comprise 6 persons appointed by the Trustee consisting of:

(i) 1 person nominated by the Trustee who shall be the chair of the Nominations Committee;

(ii) 1 person nominated by the Noongar Relationship Committee (if any) who must not be a current director or employee of an Eligible Noongar Entity;

(iii) 2 representatives of the Noongar Community that have experience with directorships and boards; and

(iv) 2 Independent persons that have experience with directorships and boards.

(b) The Trustee may determine the remuneration payable (if any) to the Nominations Committee.

(c) Notwithstanding any other provision of this clause, where a person is removed or resigns from the Nominations Committee pursuant to clause 16.7:

(i) the Trustee must take reasonable steps to select and appoint a replacement Nominations Committee member, and

(ii) the Nominations Committee may by resolution:

A. defer meetings or making recommendations; or

B. appoint an additional member (Interim Member) nominated by the Trustee in place of the removed member for the purpose of a meeting or making a recommendation; and

(iii) the remainder of the Nominations Committee must be satisfied that the Interim Member has suitable experience with directorships and boards.

16.4 Qualifications

Nominations Committee members must demonstrate the following qualifications:

(a) financial literacy;

(b) leadership experience;

(c) absence of conflicting commitments;

(d) has not been disqualified from managing corporations or companies;

(e) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);

(f) has not been found in a civil proceeding to have violated any federal or state securities or commodities law;

(g) is not subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity; and

(h) is not a director, officer or committee member of an Eligible Noongar Entity.

16.5 Selection Process

(a) When selecting Nominations Committee members from the Noongar Community, the Trustee must:

(i) call for nominations by advertising in a range of different manners, including a suitable culturally appropriate manner; and

(ii) provide the Noongar Community with reasonable notice of the call for nominations.

(b) When selecting Independent Nominations Committee members, the Trustee must call for nominations by advertising in significant online and hard copy publications in the Trustee's discretion.

(c) When selecting the Nominations Committee members, the Trustee must in consultation with the Noongar Advisory Company (if any):

(i) review the composition of the Nominations Committee to ensure that there is a balanced mix of expertise and experience;

(ii) develop appropriate criteria for assessing the suitability of candidates;

(iii) consider candidates on the basis of merit rather than any affiliation; and

(iv) request from candidates and third party sources sufficient information to enable the Trustee to assess the candidates' fulfilment of the qualifications in clause 16.4 and the candidates' suitability.

(d) Candidates are preferred to be appointed to the Nominations Committee if they have:

(i) experience working with Indigenous communities; or

(ii) experience with recruitment of boards or committees.

16.6 Meetings and Decision Making

(a) Decisions of the Nominations Committee will be determined and their meetings will be carried out in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.

(b) The Nominations Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.

16.7 Term of appointment

(a) A person will continue to be a member of the Nominations Committee until the earlier of the:

(i) expiration of a period of 3 years;

(ii) date on which the person:

A. resigns;

B. dies;

C. becomes mentally incapacitated;

D. has their nomination for appointment revoked by the relevant body or committee which nominated them in accordance with clause 16.3; or

E. is removed as a member in accordance with clause 16.8.

(b) A person is eligible for reappointment as a member of the Nominations Committee, subject to clause 16.7(c).

(c) A person must not be appointed as a member of the Nominations Committee for more than 2 consecutive terms, but a person may be re-appointed to the Nominations Committee 3 years after the person's previous term or terms (as the case may be) expire.

16.8 Removing Nominations Committee members

(a) The Nominations Committee may by resolution remove one of its members if the person:

(i) fails to attend 3 consecutive Nominations Committee meetings without reasonable excuse; or

(ii) does an act or omission that the Nominations Committee reasonably considers is a serious breach of the Code of Conduct or Policy and Procedures Manual.

(b) A person removed under this clause 16.8 is ineligible for reappointment as a member of the Nominations Committee.

16.9 Initial Nominations Committee

Notwithstanding anything else in this clause 16, the initial Nominations Committee established following commencement of the Trust:

(a) is appointed by the Trustee with the consent of the State and the South West Aboriginal Land and Sea Council;

(b) is appointed for a period of 1 year; and

(c) is eligible for reappointment on the Nominations Committee under clause 16.7(b) and their period of office on the initial Nominations Committee will not count as a term for the purposes of clause 16.7(c).

17. Distribution

17.1 General Distribution Power

(a) Subject to requirements in clause 7 regarding the Noongar Future Fund, in each Financial Year the Trustee may Distribute so much of the net income and capital of the Trust Fund to the Eligible Noongar Entities for the Trust Purpose in such amounts and on such conditions as the Trustee may determine in accordance with this clause 17 and otherwise in accordance with this Deed.

(b) Notwithstanding clause 17.1(a), but subject to requirements in clause 7 regarding the Noongar Future Fund, the Trustee shall not be bound to exercise its discretion to distribute any of the income and capital of the Trust Fund in any Financial Year and the Trustee may accumulate and retain the income as part of the Trust Fund.

(c) The Trustee will not be in breach of its obligations under this clause 17 by reason that:

(i) some Eligible Noongar Entities may receive some benefits before others because of the limited financial resources of the Trust in any Financial Year; or

(ii) different Eligible Noongar Entities may receive benefits of different kinds or amounts to other Eligible Noongar Entities due to the activities or circumstances of the various Eligible Noongar Entities.

17.2 Default Accumulation

The Trustee shall hold so much of the net income of the Trust Fund for each Financial Year as is not the subject of a Distribution under clause 17.1(a) or a decision to accumulate under clause 17.1(b) as part of the capital of the Trust Fund within the Operations Fund, and the Trustee may use that amount for Distribution in accordance with this clause 17.

17.3 Sustainability of Distributions

In order to assist the Trustee to achieve long term sustainable and reliable levels of available funding to meet the Trust Purpose, the Trustee must have regard to the Annual Budget and the Trustee Expense Budget whenever the Trustee is considering the exercise of the Trustee's powers under this clause 17.

17.4 Applications for Distributions

(a) All applications for Distributions from the Trust Fund must be considered by the Trustee in accordance with the Funding Guidelines and in consultation with the Noongar Advisory Company.

(b) The Trustee must only approve Distributions for which it has received an application from an Eligible Noongar Entity in accordance with the Funding Guidelines.

(c) An Eligible Noongar Entity may only apply to receive Distributions for Operations Funding from the relevant ENE Operations Account of the Trust Fund.

(d) The Trustee must review every Distribution application and determine whether to approve an application and if so, determine the nature and scope of the Distribution, including any relevant Payment Conditions, having regard to:

(i) this clause 17;

(ii) the Funding Guidelines; and

(iii) the Trustee's consultation with the Noongar Advisory Company.

17.5 Payment Conditions

The Trustee may place certain conditions for release of Distributions to Eligible Noongar Entities (**Payment Conditions**) having regard to any one or more of the following factors:

(a) the size and timing of the Distribution to the Eligible Noongar Entity;

(b) the proposed use of the Distribution;

(c) the recommendations of the Noongar Advisory Company;

(d) whether the Eligible Noongar Entity's use of previous Distributions was materially in accordance with the terms of the Distribution;

(e) the Trustee's right of indemnity for the Trustee's costs and expenses;

(f) any monies owed by the Eligible Noongar Entity to the Trustee; and

(g) the Eligible Noongar Entity's conduct in relation to any Suspension Event.

17.6 ENE Distribution Accounts

Subject to clause 17.7, once the Trustee has exercised the Trustee's discretion to make a Distribution to an Eligible Noongar Entity the Trustee must:

(a) hold that amount in trust for that Eligible Noongar Entity subject to any Payment Conditions and otherwise subject to the direction of that Eligible Noongar Entity;

(b) establish, within the management accounts of the Trust Fund, a distribution account in the name of the Eligible Noongar Entity (**ENE Distribution Account**) to which that Distribution or any further Distribution may be credited; and

(c) deduct the amount of any Distribution for Operations Funding from the relevant ENE Operations Account.

17.7 Suspension of Payments

(a) The Trustee may suspend payment of a Distribution (**Suspension Amount**) to an Eligible Noongar Entity for a fixed period (**Suspension Period**) if:

(i) the Eligible Noongar Entity ceases to meet the requirements in clauses 4.2 or 5.2 (as applicable);

(ii) the Eligible Noongar Entity's use of a previous or current Distribution was not materially in accordance with, or was seriously in breach of, the terms of the Distribution;

(iii) there is a serious breach by the Eligible Noongar Entity of a Payment Condition;

(iv) an ENE Termination Notice has been issued in respect of the Eligible Noongar Entity; or

(v) there is a serious breach by the Eligible Noongar Entity of the Eligible Noongar Entity's budget for the relevant Financial Year or quarter.

(b) The Trustee must advise the Eligible Noongar Entity of:

(i) the circumstances giving rise to the suspension (**Suspension Event**);

(ii) the Suspension Amount; and

(iii) the actions required to remove the suspension (**Suspension Remedy**).

(c) Where the Suspension Event is as a result of an ENE Termination Notice, the Suspension Remedy must be the revocation or withdrawal of the ENE Termination Notice.

(d) The Trustee may forfeit the Suspension Amount if, in the Trustee's reasonable opinion, the Noongar Entity fails to complete the Suspension Remedy within the Suspension Period, and the forfeited Suspension Amount shall form part of the capital of the Operations Fund.

17.8 Non-Forfeiture of Distribution Account

For the avoidance of doubt:

(a) subject to clause 17.7(d), the amount standing to the credit of an Eligible Noongar Entity in an ENE Distribution Account is the property of the Eligible Noongar Entity and may not be forfeited; and

(b) the Eligible Noongar Entity can request payment of the balance of the ENE Distribution Account, subject to the provisions of this clause 17 relating to:

(i) Payment Conditions; and

(ii) suspension of payments.

17.9 Preparing Funding Guidelines

(a) Subject to clause 17.10, the Trustee must prepare and maintain Funding Guidelines.

(b) The initial Funding Guidelines are set out in Schedule 1.

(c) The Funding Guidelines must:

(i) have regard to the Funding Principles;

(ii) include rules and procedures for administering applications incorporating the following:

A. the application process for Distributions;

B. the process for the Trustee consulting with the Noongar Advisory Company;

C. factors the Trustee must consider in assessing applications and determining Distributions; and

D. how Eligible Noongar Entities must report to the Trustee on the use of Distributions;

(iii) be prepared in a manner that is culturally appropriate for the Noongar Community; and

(iv) encourage the Eligible Noongar Entities to seek out funding bodies to assist with funding Special Projects.

17.10 Funding Principles

When making Funding Guidelines, the Trustee must have regard to the following Funding Principles:

(a) the principal source of Distributions is the Operations Fund;

(b) Distributions should be made in a way that supports the Eligible Noongar Entities to benefit a broad cross-section of the Noongar Community but without limiting the Trustee's discretion as to the manner in which it will seek to balance Distributions between Eligible Noongar Entities;

(c) Distributions should, in the Trustee's opinion, be just, fair and equitable as between Eligible Noongar Entities (which does not necessarily require equal Distributions);

(d) Distributions must only be applied by Eligible Noongar Entities in furtherance of their objects;

(e) it is a matter for each Eligible Noongar Entity to determine how it will pursue its objects; and

(f) it is recognised that each Eligible Noongar Entity will have different goals, plans, pathways and timelines that should not be compared or measured against other Eligible Noongar Entities.

17.11 Review of the Funding Guidelines

The Trustee may Modify the Funding Guidelines from time to time **provided that** the:

(a) Funding Guidelines must at all times be substantially in accordance with clause 17.9(c) and the terms of this Deed (other than Schedule 1)

(b) Funding Guidelines must be consistent with the Strategic Plan;

(c) Trustee has consulted with the Noongar Advisory Company;

(d) Trustee has obtained the consent of the State, where the Modification occurs during the State Contribution Period;

(e) Trustee provides a copy of the Modified Funding Guidelines to the:

(i) Eligible Noongar Entities;

(ii) State, where the Modification occurs during the State Contribution Period; and

(iii) Noongar Advisory Company.

17.12 Reporting

(a) The Trustee must ensure that it includes in its Trustee's Annual Report all Distributions including details of the:

(i) recipient of the Distribution;

(ii) amount of the Distribution;

(iii) purpose for which the Distribution is being applied;

(iv) relevant factors the Trustee has taken into consideration in assessing the application for Distribution;

(v) reporting requirements that apply to the Distribution; and

(vi) outcome of the Distribution, if known.

(b) The Trustee must report on Distributions in its Trustee's Annual Report in accordance with the Funding Guidelines that applied at the time of the relevant Distribution (which may not be the same Funding Guidelines that apply at the time of preparing the Trustee's Annual Report).

18. Budgets

18.1 Sustainability

The Trustee must have regard to achieving long term capacity and sustainability of the Trust Fund to support the expected needs of the Eligible Noongar Entities whenever the Trustee is considering the exercise of the Trustee's powers under this clause 18.

18.2 Annual Budget

(a) Having regard to the Budget Principles, and after consultation with the Investment Committee and the Noongar Advisory Company, the Trustee must determine in respect of each Financial Year:

(i) the following budgeted amounts (**Annual Budget**):

A. Annual Operations Budget;

B. Annual Special Projects Budget; and

C. Trustee Expense Budget; and

(ii) the maximum share of the Annual Operations Budget that is available for Distribution to each Eligible Noongar Entity for Operations Funding which shall be allocated to the relevant ENE Operations Account (**Annual ENE Allocation**).

(b) The Trustee must, within 14 days of determining the Annual Budget and the Annual ENE Allocation provide a copy to the:

(i) Eligible Noongar Entities;

(ii) State during the State Contribution Period;

(iii) Noongar Advisory Company; and

(iv) Investment Committee.

18.3 Budget Principles

When determining the Annual Budget and Annual ENE Allocation, the Trustee must have regard to the following Budget Principles:

(a) ensure that Distributions do not exceed levels which would reduce the long term capacity of the Trust Fund to support the expected Operations Funding needs of the Eligible Noongar Entities;

(b) the area and population of the Noongar Community of each Region;

(c) the reasonable costs of supporting the core functions of the Eligible Noongar Entities;

(d) determine a fair, just and equitable (which does not necessarily mean equal) allocation of the Operations Funding that is available for Distribution between the Eligible Noongar Entities having regard to the:

(i) number of members in each Agreement Group;

(ii) scope and nature of Cultural Land in which the Eligible Noongar Entity has an interest, and the cost of administering and managing that Cultural Land;

(iii) needs and aspirations of the Region and the Eligible Noongar Entity, having regard to the Eligible Noongar Entity's most recent annual plan and strategic plan;

(iv) capacity of the Eligible Noongar Entity to undertake the activities proposed in its most recent annual plan and strategic plan;

(v) current status of each Eligible Noongar Entity having regard to the Eligible Noongar Entity's most recent audited annual report and any Special Purpose Report; and

(vi) that a minimum of 70 percent (or such other percentage determined by the Trustee with the consent of the Noongar Advisory Company and the State) of the State Contribution to the Operations Fund available for Distribution in any Financial Year must be available for allocation to the Regional Corporations; and

(e) any other factors that the Trustee considers appropriate to take into account.

19. Investment

19.1 Trustee's Investment Powers

The Trustee may invest part or all of the Trust Fund only:

(a) in accordance with the Investment Principles and:

(i) the Investment Policy; or

(ii) where there is no Investment Policy, the Default Investment Policy; and

(b) in consultation with the Investment Committee (if there is one) appointed under clause 20;

(c) having regard to the Trustee's Powers in Schedule 5; and

(d) exercising the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

19.2 Trustees Act

The investment of trust assets must comply with Part III of the Trustees Act. In particular:

(a) investment decisions must meet the requirements in section 18 of the Trustees Act; and

(b) the investments must be reviewed at least once each year.

19.3 Investment Principles

The Trustee and the Investment Committee must have regard to the following Investment Principles when preparing or Modifying the Investment Policy and when considering the exercise of the Trustee's investment powers:

(a) the Investment Policy must provide specific guidelines for investment of the following Sub Funds:

(i) Noongar Future Fund;

(ii) Operations Fund;

(iii) Cultural Land Fund;

(iv) Development Land Fund;

(v) Special Projects Fund;

(vi) Housing Land Fund; and

(vii) the balance of the Trust Fund not held in any particular Sub Fund;

(b) the Investment Policy must establish appropriate benchmarks for the Trustee to report on actual performance of the Trustee's investments against the agreed investment performance benchmarks identified in the Investment Policy, including the Trustee's costs and expenses for conducting the investments;

(c) investments of the Noongar Future Fund must have an appropriate asset mix that reflects the long term goals of the Noongar Future Fund (being commensurate with perpetual charitable funds of this nature);

(d) investments of Development Land involving Property Development Activities must be:

(i) undertaken by one or more Noongar Boodja Development Corporations rather than by the Trust;

(ii) subject to specific rules agreed between the Trustee, the Investment Committee (if there is one) and the Noongar Boodja Development Corporations; and

(iii) in accordance with clause 11 of this Deed; and

(e) investments of Housing Land:

(i) involving:

A. management of housing stock must be undertaken by suitably qualified housing management companies; and

B. Housing Land Development Activities in the nature of commercial development must be undertaken by one or more Noongar Boodja Development Corporations rather than by the Trust, where the Trustee deems it appropriate; and

(ii) must be in accordance with clause 12 of this Deed.

19.4 Investment Policy

(a) Having regard to the Investment Principles and subject to clause 19.5, the Trustee must prepare an Investment Policy for the investment of the Trust Fund in the following way:

(i) prepare a draft Investment Policy;

(ii) following the preparation of a draft Investment Policy, prepare an expression of interest for the services of one or more Investment Managers with proposed investment mandates in respect to both financial assets and land assets;

(iii) call for and receive proposals in response to the expressions of interest from prospective Investment Managers;

(iv) shortlist candidates for selection as the Investment Manager and present them to the Investment Committee with the Trustee's views/opinions;

(v) arrange for shortlisted candidates to present proposals to the Investment Committee;

(vi) obtain feedback and recommendations from the Investment Committee on proposals from Investment Managers;

(vii) select the preferred Investment Manager or Investment Managers;

(viii) amend the draft Investment Policy having regard to the selected Investment Manager's proposals and/or investment mandates and provide it to the Investment Committee for feedback and recommendations; and

(ix) finalise the Investment Policy.

(b) Where the Trustee is a Professional Trustee Company:

(i) the Trustee and its Associates are eligible to respond to any expressions of interest called in accordance with clause 19.4(a)(iii); and

(ii) the Trustee may only appoint itself or its Associates as the Investment Manager or one of the Investment Managers with the prior written consent of the Investment Committee.

19.5 Review of the Investment Policy

The Investment Policy may be reviewed or Modified by the Trustee, provided that the Trustee must first consult with the:

(a) Noongar Corporations Committee (if any);

(b) Investment Committee;

(c) State (during the State Contribution Period); and

(d) Noongar Advisory Company.

19.6 Making the Investment Policy Available

At the end of each Financial Year, the Trustee must provide a copy of the most recent Investment Policy to the:

(a) Eligible Noongar Entities;

(b) Investment Committee;

(c) State; and

(d) Noongar Advisory Company.

20. Investment Committee

20.1 Functions

The Investment Committee must:

(a) review proposals from Investment Managers and provide recommendations and feedback to the Trustee;

(b) review the draft Investment Policy as prepared by the Trustee and provide recommendations and feedback to the Trustee;

(c) assist the Trustee to review the performance of the investments made by the Trustee against the agreed investment performance benchmarks identified in the Investment Policy;

(d) review the Trustee's compliance with its investment obligations under this Deed, and provide recommendations to the Trustee as to how those obligations may be met;

(e) provide unbiased investment advice and recommendations to the Trustee; and

(f) provide guidance to the Trustee on:

(i) Property Development Activities; and

(ii) Housing Land Development Activities.

20.2 Composition

(a) The Investment Committee must be appointed by the Trustee and comprise:

(i) **1** representative from the Trustee who shall be the chair of the Investment Committee;

(ii) **2** persons having at least 5 years investment or property development expertise or experience and nominated by the Noongar Corporations Committee on the recommendation of the Nominations Committee;

(iii) **4** Independent persons nominated by the Trustee on the recommendation of the Nominations Committee comprising:

A. 2 persons that have at least 5 years expertise or experience in significant property transactions or residential, commercial, industrial or retail property development special projects; and

B. 2 persons that have at least 5 years investment expertise or experience in relation to funds under management of greater than $500 million.

(b) The Trustee may determine the remuneration payable (if any) to the Investment Committee.

(c) Notwithstanding any other provision of this clause, where a person is removed or resigns from the Investment Committee pursuant to clauses 20.6 or 20.7:

(i) the Trustee must take reasonable steps to select and appoint a replacement Investment Committee member, and

(ii) the Investment Committee may by resolution:

A. defer meetings or making recommendations; or

B. appoint an additional member (Interim Member) nominated by the Trustee in place of the removed member for the purpose of a meeting or making a recommendation; and

(iii) the Nominations Committee must be satisfied that the Interim Member has at least 5 years expertise or experience in:

A. investment or property development;

B. significant property transactions; or

C. investment of funds under management of greater than $500 million.

20.3 Qualifications

An Investment Committee member must demonstrate the following qualifications:

(a) financial literacy;

(b) leadership experience;

(c) absence of conflicting commitments;

(d) has not been disqualified from managing corporations or companies;

(e) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);

(f) has not been found in a civil proceeding to have violated any federal or state securities or commodities law;

(g) is not subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity; and

(h) is not a director, officer or committee member of an Eligible Noongar Entity.

20.4 Selection Process

(a) When selecting Investment Committee members, the Trustee must request the Nominations Committee to:

(i) call for nominations by advertising in a range of different manners, including advertising in significant online and hard copy publications in the Trustee's discretion and in a suitable culturally appropriate manner; and

(ii) provide reasonable notice of the call for nominations.

(b) When selecting the Investment Committee members, the Trustee must request the Nominations Committee to:

(i) review the composition of the Investment Committee to ensure that there is a balanced mix of expertise and experience;

(ii) develop appropriate criteria for assessing the suitability of candidates;

(iii) consider candidates on the basis of merit rather than any affiliation; and

(iv) request from candidates and third party sources sufficient information to enable the Trustee to assess the candidates' fulfilment of the qualifications in clauses 20.2 and 20.3 and the candidates' suitability.

20.5 Investment Committee Decisions

(a) Decisions of the Investment Committee will be determined and their meetings will be carried out in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.

(b) The Investment Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.

20.6 Term of appointment

(a) A person will continue to be a member of the Investment Committee until the earlier of the:

(i) expiration of a period of 3 years;

(ii) date on which the person:

A. resigns;

B. dies;

C. becomes mentally incapacitated;

D. has their nomination for appointment revoked by the relevant body or committee which nominated them in accordance with clause 20.2; or

E. is removed as a member in accordance with clause 20.7.

(b) A person is eligible for reappointment as a member of the Investment Committee, subject to clause 20.6(c).

(c) A person must not be appointed as a member of the Investment Committee for more than 2 consecutive terms, but a person may be re-appointed to the Investment Committee 3 years after the person's previous term or terms (as the case may be) expire.

20.7 Removing Investment Committee members

(a) The Investment Committee may by resolution remove one of its members if the person:

(i) fails to attend 3 consecutive Investment Committee meetings without reasonable excuse; or

(ii) does an act or omission that the Investment Committee reasonably considers is a serious breach of the Code of Conduct or Policy and Procedures Manual.

(b) A person removed under this clause 20.7 is ineligible for reappointment as a member of the Investment Committee.

21. Strategic Plan

21.1 Purpose of Strategic Plan

The purpose of the Strategic Plan is to:

(a) set out the long term objectives to facilitate advancement of the Trust and the Trust Purpose having regard to:

(i) the anticipated budgets of the Trust;

(ii) anticipated Trust income and expenditure;

(iii) any requirements under the ILUAs; and

(iv) any proposed priorities and programs of the Trust;

(b) review and provide recommendations for improvement of the Funding Guidelines and the Investment Policy;

(c) provide context having regard to the social, political, economic, government and environmental climate of the time; and

(d) provide recommendations for the better administration of the Trust having regard to content of the Trustee's Annual Reports for the years covered by the Strategic Plan.

21.2 Formulating Strategic Plans

During the First Year, and every 3 years thereafter at the beginning of the relevant Financial Year, the Trustee will consider and formulate a Strategic Plan for the next 3 years using the following procedure:

(a) the Trustee will formulate a proposed Strategic Plan, having regard to:

(i) the Trustee's Annual Reports from previous years (if any);

(ii) the Funding Guidelines and Investment Policy;

(iii) the actual and anticipated administration, overheads and operating expenses of the Trust (if any);

(iv) the Trust Fund and the financial position of the Trust; and

(v) the findings of any Auditor's review of the Trust's performance;

(b) for the purpose of reviewing the current Strategic Plan and seeking input on the proposed Strategic Plan, the Trustee will consult with:

(i) any Advisory Committees (if applicable);

(ii) the Eligible Noongar Entities;

(iii) the Investment Committee;

(iv) the State, during the State Contribution Period;

(v) the Noongar Corporations Committee; and

(vi) the Noongar Advisory Company.

(c) having regard to the consultations conducted under clause 21.2(b) above, the Trustee will then finalise the Strategic Plan.

21.3 Modifying the Strategic Plan

The Trustee may Modify the Strategic Plan during the Financial Years to which the Strategic Plan relates provided the Trustee follows a substantially similar procedure to the procedure outlined in clause 21.2.

21.4 Implementation of the Strategic Plan

The Trustee must administer the Trust in accordance with the Strategic Plan and must seek to implement any recommendations contained in the Strategic Plan.

21.5 Making Available the Strategic Plan

As soon as practicable after the Strategic Plan is finalised, the Trustee must make it available for viewing by the:

(a) Eligible Noongar Entities;

(b) Investment Committee;

(c) State; and

(d) Noongar Advisory Company.

22. Trustee's Actions

22.1 Trustee to establish Land Sub and Land Register

(a) In order to efficiently manage and hold the land assets of the Trust Fund, the Trustee must:

(i) establish a wholly owned subsidiary of the Trust to hold any interests or Management Orders in land at all times on bare trust for and on behalf of the Trustee (**Land Sub**); and

(ii) ensure that Land Sub undertakes any action as directed by the Trustee in respect of the interests or Management Orders in land it holds in accordance with clause 22.1(a)(i).

(b) The Trustee must establish, maintain and regularly update a register of all interests or Management Orders in land held by the Land Sub (**Land Register**), which also identifies the:

(i) Region and Relevant Regional Corporation/s to which an interest or Management Order in land relates; and

(ii) costs and statutory obligations of the relevant interest or Management Order.

(c) The Trustee must make the Land Register available to the Eligible Noongar Entities.

(d) The Trustee may contract the CSC to establish, maintain and regularly update the Land Register, provided that the Trustee enters into a service agreement with the CSC which provides that at all times:

(i) ownership of all intellectual property relating to the Land Register remains vested in the Trustee;

(ii) the Land Register shall be accessible by the Trustee and the Regional Corporations; and

(iii) the Land Register and the information contained on it is strictly confidential and cannot be disclosed other than to the Trustee or the Regional Corporations, or as otherwise required by law, without the prior written consent of the Trustee.

22.2 Trustee's Discretions and Powers

(a) Except where there is an express contrary provision in this Deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

(b) Subject to this Deed, in addition to the powers vested in the Trustee by law, the Trustee has:

(i) the power to do all such lawful acts and things as are incidental or conducive to the attainment of the Trust Purpose; and

(ii) the additional powers described in Schedule 5.

22.3 Uncommercial Transactions

(a) Subject to clause 22.3(b), none of the Trustee, a member, director, employee, agent or officer of the Trustee, the Settlor, a legal personal representative of the Settlor or an Associate of the Settlor or Trustee may become an Eligible Noongar Entity or directly or indirectly receive any part of the Trust Fund or the income.

(b) Clause 22.3(a) does not prevent the payment in good faith of any of the following to a member, director, employee, agent or officer of the Trustee, with the approval of the Trustee:

(i) any distribution for the benefit of, either directly or indirectly, any member of the Noongar Community made strictly in accordance with the terms of this Deed; and

(ii) any indemnity, remuneration or payment of expenses permitted by this Deed.

(c) Where a member, director, employee, agent or officer of the Trustee considers that it may receive a payment under clause 22.3(b) they must:

(i) disclose that matter to the Trustee as soon as possible;

(ii) not take part in any deliberations regarding that matter; and

(iii) not vote on that matter.

22.4 Trustee's Decisions and Independence

(a) Subject to any express provision to the contrary in this Deed, if the Trustee acts in good faith, the Trustee is not bound to implement any directives, resolutions of any meeting or views expressed by any of the Noongar Advisory Company, Nominations Committee, Investment Committee, Advisory Committee (if any) or Eligible Noongar Entity.

(b) In making a decision, whether made on a question actually raised or implied in the acts or proceedings of the Trustee:

(i) the Trustee may resolve conclusively all questions of fact or interpretation;

(ii) a decision of the Trustee may be made in the absolute discretion of the Trustee and is conclusive in all respects and binds all persons interested in the Trust and whether or not the decision is reasonable, based on fact, or is arbitrary;

(iii) the Trustee need not give any reason or justification in respect of a decision; and

(iv) the Trustee may change a decision made by it previously.

22.5 Personal Interest of Trustee

(a) Where the Trustee or any Associate of the Trustee has an interest in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Trustee, the Trustee must disclose the nature of the interest to the Noongar Advisory Company, Noongar Corporations Committee and the Investment Committee.

(b) The Trustee shall make regulations concerning the manner in which the Trustee will manage conflicts of interest in relation to carrying out the role of the Trustee in accordance with this Deed and shall provide a copy of the regulations to the Noongar Advisory Company, Noongar Corporations Committee and the Investment Committee.

22.6 Trustee Consultation

Where the Trustee is required under this Deed to consult with any party, the Trustee may, acting reasonably, determine the appropriate time and manner for such consultation having regard to the nature, circumstances and costs of the consultation.

22.7 Liability and Indemnity

Subject to clause 22.8, the Trustee and any officer, agent or employee of the Trustee, where purporting to act in the exercise of the trusts of this Deed or exercise powers or discretions under this Deed is:

(a) not liable for any loss or liability; and

(b) entitled to be indemnified from the Trust Fund in respect of any loss, liability, costs and expenses relating to:

(i) entering into this Deed or any deed Modifying this Deed;

(ii) establishing, operating, administering, amending, terminating and winding up the Trust;

(iii) all matters incidental to the Trust; and

(iv) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 22.7(b) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this Deed.

22.8 Limitations

Notwithstanding clause 22.7, the Trustee and an officer, agent or employee of the Trustee is prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:

(a) the dishonesty of that Trustee, officer, agent or employee of the Trustee;

(b) gross negligence or recklessness of that Trustee, officer, agent or employee of the Trustee;

(c) a deliberate act or omission known by that Trustee, officer, agent or employee of the Trustee to be a breach of trust; or

(d) penalties under section 426-120 in Schedule 1 to the Taxation Administration Act (1953).

22.9 Further Advisory Committees

(a) This clause 22.9 does not apply to each committee the Trustee is specifically required to form under this Deed.

(b) The Trustee may in its discretion establish further advisory committees for particular purposes from time to time (**Advisory Committee**) and appoint and remove, or provide for the appointment and removal of, members of those Advisory Committees provided that:

(i) the Trustee must determine the remuneration (if any) payable to an Advisory Committee;

(ii) an Advisory Committee member does not have to be a member of the Noongar Community;

(iii) the Trustee must not establish an Advisory Committee that duplicates or assumes all or any of the functions of the Noongar Advisory Company under this Deed; and

(iv) the Trustee must ensure that any matters relating to a specific Region, the Relevant Regional Corporations, the Agreement Group members of that Region or the Noongar Boodja Traditional Lands of that Region will be referred for consideration to the Relevant Regional Corporation and the Noongar Advisory Company.

(c) The Trustee will determine the functions and proceedings of an Advisory Committee.

(d) If the Trustee has established an Advisory Committee in respect of a particular matter then the Trustee must seek the opinion of that Advisory Committee before the Trustee makes a decision in relation to that matter.

(e) Decisions of an Advisory Committee will be determined and their meetings convened in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.

(f) An Advisory Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.

(g) The decisions of an Advisory Committee are recommendations only and do not bind the Trustee.

23. Costs and Expenditure

23.1 Trustee's Remuneration

(a) Subject to clause 23.3, the Trustee may charge and be paid out of any part of the capital or income of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However:

(i) the maximum remuneration chargeable by the Trustee in respect of any Financial Year must not exceed the remuneration of trustee companies provided for in Part 5D.3 of the Corporations Act;

(ii) the first Trustee's remuneration shall be in accordance with Schedule 9 and includes those costs and expenses under clause 23.2 that form part of the first Trustee' remuneration; and

(iii) subsequent Trustees' remuneration must be set out in a remuneration schedule attached to the Deed of Appointment.

(b) Other than in respect of the first Trustee, to the extent that the costs and expenses of the Trust under clause 23.2 form part of the Trustee's remuneration under clause 23.1(a), those costs and expenses must be provided for in the Deed of Appointment.

23.2 Costs and Expenses

(a) Subject to clause 23.1(b), the Trustee may pay or reimburse itself from the Trust Fund for all costs and expenses reasonably and properly incurred in carrying out, administering and discharging the Trust and in exercising any power or discretion or authority conferred on the Trustee by this Deed or the law.

(b) Distributions of Operations Funding and Special Projects Funding do not form part of the Trustee's costs and expenses.

(c) The Trustee's costs of holding and managing Cultural Land may, where necessary, be met from the Future Fund.

(d) The Trustee must endeavour at all times to keep the costs of the administration of the Trust to the minimum necessary to perform its obligations.

23.3 Trustee Expense Budget

(a) The Trustee must establish internal controls of expenditure by the Trustee including compiling an annual budget of expenses of the Trust (**Trustee Expense Budget**) which must incorporate a budget for each quarter.

(b) The Trustee must consult with the Noongar Advisory Company and the Noongar Relationship Committee in relation to the Trustee Expense Budget.

(c) The Trustee Expense Budget must include the remuneration of the Trustee.

(d) The Trustee must monitor the expenditure of the Trust in each quarter to ensure that the Trust expenses do not exceed the Trustee Expense Budget.

(e) If the Trustee's expenditure exceeds the Trustee Expense Budget in any quarter, the Trustee must as soon as practicable:

(i) examine the Trust accounts and the Trust's activities in an effort to reduce the Trustee's expenditure;

(ii) prepare a written report detailing:

A. the extent to which the Trustee's expenditure exceeds the Trustee Expense Budget; and

B. the Trustee's proposals to reduce the Trust expenditure; and

(iii) provide the report referred to in clause 23.3(e)(ii) to the:

A. Noongar Advisory Company; and

B. Noongar Relationship Committee.

24. Records and Accounts

24.1 Books of Account and Receipts

(a) The Trustee must keep or cause to be kept proper accounts in respect of all financial transactions, receipts and payments on account of the Trust and of all dealings connected with the Trust which must give a true and fair view of the financial position of the Trust.

(b) As soon as practicable after the end of each Financial Year the Trustee must prepare or cause to be prepared financial statements showing the financial position of:

(i) the Trust Fund; and

(ii) each separate management account (including each Sub Fund),

in respect of that Financial Year.

24.2 Audit

(a) The financial statements and all transactions made by the Trustee, the Land Sub, the Noongar Advisory Company and any Noongar Boodja Development Corporations must be audited by an Auditor.

(b) For each Financial Year, the Trustee must provide copies of the audited financial statements as soon as reasonably practicable after receipt to the:

(i) Eligible Noongar Entities.

(ii) Investment Committee;

(iii) State; and

(iv) Noongar Advisory Company.

24.3 Trust Fund to be kept distinct

The Trustee must keep the Trust Fund entirely separate and distinct from any other trust fund.

24.4 Receipts by others

Where the Trustee makes a payment or Applies income or capital from the Trust Fund to a recipient, receipt confirmed by the person purporting to be the treasurer, secretary or other proper officer of the recipient shall be sufficient discharge to the Trustee.

24.5 Classification of Trust Income

In making any decision under this Deed the Trustee may:

(a) treat as income of the Trust Fund any profit, gain or receipt which is assessable income for the purposes of the Tax Law;

(b) treat as expenditure against income of the Trust Fund (except that the Trustee may only treat as expenditure against income of the Noongar Future Fund those expenditures, payments, losses or sums which are reasonably and properly incurred in relation to the Noongar Future Fund):

(i) any expenditure, payment or loss which is an allowable deduction for the purposes of the Tax Law; and

(ii) any sum which is a capital loss for the purposes of the Tax Law;

(c) distinguish between income of a particular nature or from a particular source as defined or referred to in the Tax Law and deal with each in a particular manner irrespective of the manner in which any other income of a particular nature or from a particular source is dealt with; and

(d) determine the income (within the meaning given in this clause) against which any loss (including, without limitation, any capital loss or any net capital loss), outgoing, expenditure or payment which is a deduction for the purposes of the Tax Law will be set off (except that the Trustee may only set off such outgoings, expenditures or payments against income of the Noongar Future Fund to the extent that those outgoings, expenditures or payments are reasonably and properly incurred in relation to the Noongar Future Fund).

25. Trustee's Annual Report

(a) Within 3 months after the end of a Financial Year, the Trustee will conduct a review of the Trust's activities for that Financial Year (**Trustee's Annual Report**) which will include:

(i) a brief review of whether the Trust's activities were carried out in accordance with the terms of the Strategic Plan and this Deed;

(ii) details of the CSC and Regional Corporations' Special Purpose Reports and/or audited annual reports, as appropriate;

(iii) a summary of the Trust's activities for the previous Financial Year and the Trustee's remuneration, costs and expenditure;

(iv) a summary of the meetings held by the following committees for the previous Financial Year:

A. Investment Committee;

B. Nominations Committee;

C. Noongar Relationship Committee; and

D. Noongar Advisory Company.

(v) a summary of the investment performance of the Trustee for the previous Financial Year;

(vi) in respect of the Noongar Future Fund, Operations Fund, Special Projects Fund, Cultural Land Fund and Development Land Fund, Housing Land Fund, Land Sub and any Noongar Boodja Development Corporations:

A. a summary of actions arising;

B. opening balance at the beginning of the reporting period;

C. closing balance at the end of the reporting period; and

D. summary of transactions during the reporting period;

(vii) a summary of the amount standing to the credit of each of the ENE Operations Accounts at the end of the Financial Year;

(viii) in accordance with clause 17.12, details of the actual Distributions made, or the expenditure of funds, by the Trustee for the previous Financial Year in relation to the Annual Budget in respect of the Eligible Noongar Entities;

(ix) a summary of the Trustee's assessment of the CSC and Regional Corporations' service delivery; and

(x) a summary of the meetings held with the Nominee Entity (if any) and the progress of the Nominee Entity's transition towards meeting the

Dedicated Trustee Requirements.

(b) The Trustee's Annual Report is to be made available for viewing by the:

(i) Auditor;

(ii) Eligible Noongar Entities;

(iii) State; and

(iv) Noongar Advisory Company.

26. Strategic Review of the Trust

(a) The Trustee must undertake a strategic review of the Trust in consultation with the Eligible Noongar Entities, the State, the Noongar Relationship Committee and the Noongar Advisory Company at the following times:

(i) 5 years after the date of this Deed;

(ii) 10 years after the date of this Deed; and

(iii) thereafter, at the end of every 10 year period,

(**Strategic Review**).

(b) The Strategic Review must consider the manner in which the Trust operates with the object of identifying:

(i) any shortcomings in the Trust's operation;

(ii) any means of more effectively operating the Trust; and

(iii) the effectiveness of the Noongar Future Fund in enabling the Trust to carry out its objects sustainably in perpetuity.

(c) The State and the Noongar Advisory Company must agree the scope of the Strategic Review having regard to:

(i) the value of the Trust Fund held by the Trust;

(ii) the cost, time and outcomes sought from the Strategic Review;

(iii) the Trustee's proposed activities as set out in its current Strategic Plan; and

(iv) the success to date of the Trustee in meeting the goals and objectives set out in its most recently completed Strategic Plan.

(d) When undertaking the Strategic Review, the Trustee must:

(i) consult with the Eligible Noongar Entities; and

(ii) convene, at the Trustee's cost, a meeting with the members of each Eligible Noongar Entity (with the assistance of the Eligible Noongar Entity) for the purpose of obtaining input into the Strategic Review.

(e) The cost of undertaking the Strategic Review may be charged to and paid out of the Trust Fund.

(f) The Trustee must communicate the results of the Strategic Review to the:

(i) Auditor;

(ii) Eligible Noongar Entities;

(iii) Investment Committee;

(iv) Nominations Committee;

(v) Noongar Relationship Committee;

(vi) State; and

(vii) Noongar Advisory Company.

27. Modifying the Trust Deed

The Trustee may only Modify the provisions of this Deed:

(a) provided that it would not result in the Trust ceasing to be a trust for charitable purposes or the Trust ceasing to be entitled to endorsement as a tax exempt entity by the Commissioner of Taxation under the Tax Law;

(b) following consultation with the:

(i) Noongar Corporations Committee;

(ii) Investment Committee; and

(iii) Noongar Advisory Company; and

(c) with the prior written consent of the:

(i) Commissioner of Taxation, if required by the Tax Law;

(ii) Noongar Relationship Committee; and

(iii) State.

28. General Legal Provisions

28.1 Notices

(a) Any notice or communication relating to this Deed is to be in writing and may be given by an agent of the sender.

(b) A notice or communication may be given by:

(i) hand delivery to the person's current address for service;

(ii) pre-paid ordinary mail or if the address is outside Australia by pre-paid air mail to the person's current address for service;

(iii) facsimile to the person's current number for service;

(iv) electronic mail to the person's current e-mail address; or

(v) such other means as the Trustee determines in its discretion having regard to the purpose and contents of the notice and the intended recipients.

(c) If a communication is given by:

(i) hand, it is taken to have been received at the time of delivery;

(ii) post, it is taken to be received if posted within Australia to an Australian address 3 Business Days after posting and in any other case 7 Business Days after posting;

(iii) facsimile and the sender's facsimile machine produces a transmission confirmation report indicating that the facsimile was sent to the addressee's facsimile, it is taken to be received by the addressee at the time indicated on that report, or the day after if sent after 5:00pm in Perth, Western Australia; or

(iv) electronic mail, it is taken to be received on the same day that it was sent, or the day after if sent after 5.00 pm in Perth, Western Australia.

28.2 Delegation of Powers

(a) The Trustee may by power of attorney or otherwise delegate any of the discretionary or other powers given to it under this Deed to one or more persons or committees consisting of such persons as the Trustee thinks fit. The execution or exercise of any of the trusts or powers of this Deed by an attorney or delegate is valid and effectual and binds all persons interested in the Trust Fund.

(b) The Trustee must not delegate duties imposed on it by this Deed or the law.

(c) The Trustee may employ and pay a solicitor, accountant, broker or an employee or any other person to transact any business or to do any act required or permitted to be done under or in connection with the administration and management of the Trust.

28.3 Winding Up

(a) The Trustee may only wind up or terminate the Trust:

(i) following consultation with the:

A. Noongar Corporations Committee;

B. Investment Committee; and

C. Noongar Advisory Company; and

(ii) with the prior written consent of the:

A. Eligible Noongar Entities; and

B. State.

(b) Upon the winding up of the Trust, the Trustee must pay or apply any assets of the Trust Fund remaining after the satisfaction of all its debts and liabilities to or for one or more funds, authorities or institutions which are charitable at law and are established for similar purposes to the Trust Purpose as the Trustee decides:

(i) following consultation with the Noongar Advisory Company; and

(ii) with the consent of the:

A. Commissioner of Taxation; and

B. State.

28.4 Governing Law

This Deed will be governed by the laws of Western Australia.

Schedule 1 – Funding Guidelines

S1.1 Application Procedure

S1.1.1 Timing of Applications

(a) Eligible Noongar Entities must attempt to submit to the Trustee an application for Operations Funding for the forthcoming Financial Year on or before 31 March of the previous Financial Year.

(b) The Trustee may in its discretion accept late or incomplete applications for Operations Funding.

(c) The Trustee must attempt to determine applications for Operations Funding for the forthcoming Financial Year on or before 31 May of the previous Financial Year, or such later date as the Trustee determines from time to time, to ensure that the Eligible Noongar Entities have sufficient time to revise their operations budgets and annual plans prior to the commencement of the forthcoming Financial Year.

(d) The timing of applications for Special Projects Funding will be determined from time to time in accordance with any relevant Special Project Guidelines.

(e) The Trustee may in its discretion accept the first application for Operations Funding for a proposed Eligible Noongar Entity from the CSC on behalf of that proposed Eligible Noongar Entity.

S1.1.2 Applications for Operations Funding

An application for Operations Funding should:

(a) confirm that the Operations Funding will only be applied in furtherance of the Eligible Noongar Entity's objects;

(b) include the Eligible Noongar Entity's budget for the forthcoming Financial Year;

(c) include the Eligible Noongar Entity's most recent annual plan;

(d) include the Eligible Noongar Entity's most recent strategic plan;

(e) include the Eligible Noongar Entity's most recent Special Purpose Report (if any) and/or audited annual report, to the extent not already provided to the Trustee;

(f) identify any material differences to the Eligible Noongar Entity's budget for the previous and current Financial Year and the reasons for the differences;

(g) identify where the Eligible Noongar Entity's expenditure has exceeded the budget for the current Financial Year (if at all) and identify the Eligible Noongar Entity's steps to reduce its expenditure;

(h) in the case of the Regional Corporations, confirm that during the Start-Up Period, the Operations Funding will not be used for any CSC Regional Services that would otherwise be available from the CSC;

(i) in the case of the Regional Corporations, identify the costs associated with any CSC Optional Services that the Regional Corporation wishes to obtain from the CSC; and

(j) in the case of the CSC, confirm that an appropriate service agreement is in place with each Regional Corporation.

S1.1.3 Applications for Special Projects Funding

An application for Special Projects Funding must set out:

(a) full details of the Special Project including timelines;

(b) the intended outcome of the Special Project;

(c) an explanation of how the Special Project furthers the Eligible Noongar Entity's objects;

(d) the type and amount of assistance sought from the Trust;

(e) the type and amount of assistance committed from other sources for the Special Project, if known;

(f) the expected sections or classes of the Noongar Community that will benefit from the outcomes from the Special Project;

(g) the proposed method of acquittal; and

(h) any other information required by the Trustee under the application procedure.

S1.1.4 Consultation with Noongar Advisory Company

Where the Trustee is required to consult with the Noongar Advisory Company in relation to Distributions, the consultation must proceed as follows:

(a) the consultation must occur at a meeting of the Noongar Advisory Company;

(b) the Trustee must provide the Noongar Advisory Company with appropriate background information regarding the Distribution application;

(c) the consultation must occur in such a way that the Noongar Advisory Company has the opportunity to ask the Trustee questions regarding the Distribution application or matters relevant to the Distribution; and

(d) the Trustee must provide the Noongar Advisory Company with a reasonable opportunity to deliver feedback and recommendations to the Trustee.

S1.2 Assessment of Applications

S1.2.1 General Rules

In assessing applications for Distributions, the Trustee must have regard to:

(a) the recommendations of the Noongar Advisory Company;

(b) the priority of the application in relation to other applications pending;

(c) competing applications for Distributions between Eligible Noongar Entities for different purposes;

(d) any Distribution conditions that apply to a Sub Fund from which the Distribution will be sourced; and

(e) any consultations with the Eligible Noongar Entities in respect of their applications.

S1.2.2 Operations Funding

In assessing applications for Operations Funding, the Trustee must have regard to:

(a) the Eligible Noongar Entity's previous performance in meeting its annual plan and strategic plan;

(b) what is reasonably required to ensure the proper and adequate administration of the Eligible Noongar Entity and the costs involved, based on the views of the Eligible Noongar Entity, the Noongar Advisory Company and the Trustee;

(c) whether there are any means available to ensure that the Eligible Noongar Entity acts more efficiently or cost effectively; and

(d) whether there are any other sources or funding to support the Eligible Noongar Entity.

S1.2.3 Special Projects Funding

In assessing applications for Special Projects Funding, the Trustee must have regard to:

(a) any Special Project Guidelines that apply to the Special Project;

(b) the nature of the Special Project;

(c) how many persons will benefit from the Special Project and the identity of those persons;

(d) of those persons that will benefit from the Special Project, what proportion are members of the Noongar Community;

(e) whether the Special Project brings immediate benefits to the Noongar Community or a section of it or brings multi-generational, long term benefits to future generations of the Noongar Community;

(f) what timeframe the Special Project will be completed in;

(g) how the success of the Special Project is measureable;

(h) the amount of Special Projects Funding the Eligible Noongar Entity has received from the Trust in the past and at what times;

(i) whether the Eligible Noongar Entity can demonstrate the organisational capacity, expertise or experience required to deliver the Special Project;

(j) whether there is funding available for a Special Project of this nature from other sources whether public or private;

(k) any effective social and community development programs and opportunities to work in alliances and partnerships with programs operated by governments or other organisations;

(l) what steps the Eligible Noongar Entity has taken to secure alternative funding; and

(m) whether, in the Trustee's opinion, a Distribution to an Eligible Noongar Entity for a Special Project should be alternatively funded by government.

S1.3 Reporting Requirements

The Trustee must require that an Eligible Noongar Entity in receipt of any Distribution ensures that it:

(a) keeps financial accounts and records relating to the use of the Distribution to enable all income and expenditure in connection with the Distribution to be identified in the Eligible Noongar Entity's accounts and records;

(b) provides all information, records and documents as may be reasonably requested by the Trustee from time to time;

(c) reports to the Trustee within 12 months of the Distribution:

(i) detailing the outcome of the Distribution;

(ii) comparing the outcome with the objectives of the Distribution as stated in the application made to the Trustee;

(iii) reporting on the satisfaction of any conditions that were attached to the Distribution; and

(d) upon request of the Trustee, provides to the Trustee, on or before 30 June each relevant Financial Year, or such other time as the Trustee determines, a certificate by the Eligible Noongar Entity's auditor stating the amount of the Distribution spent, or committed to be spent, for the purpose of the Distribution.

Schedule 2 – CSC Service Delivery

S2.1 Definitions

For the purpose of this Schedule 2, the following terms have the corresponding meaning:

(a) **ENE Common Platform** means a set of administrative functions or services to be developed by the CSC for use by the Eligible Noongar Entities incorporating the following:

(i) policies and procedures for general office administration;

(ii) job description forms and enterprise bargaining agreements;

(iii) accounting systems, including accounts processing, payroll processing and financial reporting;

(iv) IT systems, including file management and communications;

(v) membership database systems;

(vi) policies and procedures for conducting elections for director positions;

(vii) arrangements with third party service providers to provide the following at a group rate as amongst the Eligible Noongar Entities:

A. IT and communications services and equipment;

B. financial, auditing and tax services;

C. insurance policies, including through one or more group insurance policies amongst the Eligible Noongar Entities;

D. vehicle leasing contracts; and

E. office equipment;

(b) **Start-Up Period** means the period of time commencing on the date of this Trust Deed and expiring on the date that is 5 years from the date of this Trust Deed.

S2.2 Service Principles

The requirements in this Schedule 2 and the following principles apply to the delivery of CSC Services by the CSC:

(a) the CSC must undertake the CSC Core Services in accordance with its objects to or for the benefit of the Noongar Community;

(b) the CSC Regional Services are services that are fundamental to the day-to- day operations of the Regional Corporations. During the Start-Up Period, the CSC shall deliver the CSC Regional Services consistently as amongst the Regional Corporations to ensure the Regional Corporations receive a cost effective and consistent level of service. The CSC must aim to enhance the capacity of the Regional Corporations to provide or source CSC Regional Services for themselves after the Start-Up Period;

(c) the CSC must provide a consistently high level of service to each Regional Corporation in respect of the CSC Regional Services;

(d) the CSC must ensure that an appropriate service agreement is in place between the CSC and each Regional Corporation governing the delivery of CSC Regional Services and CSC Optional Services (if any);

(e) the CSC may exercise its independent discretion as to the most appropriate and effective manner of providing the CSC Services and satisfying the Regional Corporations' expectations of the CSC Services;

(f) the Trustee is not required to fund the CSC's costs of delivering the CSC Services over and above the Operations Funding approved in accordance with this Deed. Any additional funding is a matter for the sole discretion of the Trustee;

(g) the Trust has limited Operations Funding available and it is essential that the CSC and Regional Corporations work closely to determine the most efficient manner of delivering the CSC Services;

(h) the CSC must establish and maintain the Noongar Corporations Committee;

(i) the CSC must act in good faith and ensure that the CSC Services are completed with due care, skill and diligence and in a professional manner; and

(j) the nature and scope of the CSC Services and the costs of providing the CSC Services will fluctuate over time.

S2.3 Determining the CSC Core Services

(a) The following initial CSC Core Services apply until Modified in accordance with item S2.7:

(i) supporting and assisting the Regional Corporations to comply with the ILUAs;

(ii) establishing and maintaining the Noongar Corporations Committee, including providing secretariat support;

(iii) communicating information regarding the Noongar Settlement, ILUAs and the Trust to the Eligible Noongar Entities and the Noongar Community in a culturally appropriate manner, and through a range of mediums;

(iv) being an advocate for the Noongar Community with key stakeholders;

(v) developing and implementing engagement strategies for the Eligible Noongar Entities to liaise and work with all levels of government (Local, State and Federal) on matters regarding the Noongar Community, Noongar Settlement, ILUAs or the Trust;

(vi) conducting research into Noongar Traditional Laws and Customs, history, culture, language, genealogy and further developing cultural resources to service the needs of the Regional Corporations;

(vii) developing and managing cultural and community programs, providing delivery support and evaluation services and developing partnerships with service delivery providers;

(viii) providing support to the Regional Corporations in identifying economic development opportunities, by way of advice and linkage with public and private service providers;

(ix) maintaining the Land Register on behalf of the Trustee (if engaged to do so) and making it accessible at all times to the Trustee and the Regional Corporations; and

(x) managing activities associated with the Housing Land Fund (if engaged to do so) on such terms and conditions as the Trustee may agree with the CSC.

(b) The CSC must make the CSC Core Services available at no cost to the Regional Corporations.

S2.4 Determining the CSC Regional Services

(a) The following initial CSC Regional Services apply until Modified in accordance with item S2.7:

(i) developing and maintaining the ENE Common Platform for adoption by the Regional Corporations on an opt-in basis;

(ii) providing company secretarial support to the Regional Corporations;

(iii) providing legal advice to the Regional Corporations regarding compliance with the ILUAs, Trust Deed or the CATSI Act;

(iv) assisting the Regional Corporations to:

A. prepare budgets and applications for Operations Funding;

B. prepare reports pursuant to the CATSI Act and the Trust Deed;

(v) assisting the Regional Corporations with identifying and sourcing external funding;

(vi) providing legal and strategic advice to the Regional Corporations regarding the:

A. grant of an interest in Cultural Land to the Regional Corporation; and

B. conversion of Cultural Land into Development Land within the Region of the Relevant Regional Corporation.

(b) The CSC must make the CSC Regional Services available to the Regional Corporations at no cost during the Start-Up Period.

(c) The Trustee must fund the CSC to provide the CSC Regional Services during the Start-Up Period.

(d) The Regional Corporations are not required to utilise the CSC Regional Services delivered by the CSC, however:

(i) during the Start-Up Period and subject to clause S2.4(b), the Trustee must not make a Distribution to a Regional Corporation to meet the cost of obtaining a CSC Regional Service from a third party; and

(ii) after the Start-Up Period, a Regional Corporation may apply to the Trustee in accordance with clause 16 and the Funding Guidelines for a Distribution of Operations Funding to meet the Regional Corporation's costs of obtaining services that were previously provided by the CSC without costs as CSC Regional Services.

S2.5 Determining the CSC Optional Services

(a) The CSC Optional Services are any services outside of the CSC Regional Services and may be determined by the CSC in its discretion, having regard to the requirements of the Regional Corporations.

(b) The CSC Optional Services may include:

(i) services that the CSC develops a capacity to deliver and offers to the Regional Corporations from time to time; or

(ii) services that a Regional Corporation identifies a need for that are not currently being offered by the CSC, that the Regional Corporation requests the CSC to deliver.

(c) The CSC may in its discretion offer the CSC Optional Services to the Regional Corporations on a fee for service basis.

(d) CSC Optional Services must be charged by the CSC on a cost recovery only basis.

(e) The Trustee must not make a Distribution to the CSC to deliver the CSC Optional Services.

(f) If a Regional Corporation wishes to engage the CSC to deliver a CSC Optional Service, the Regional Corporation may apply to the Trustee in accordance with clause 17 and the Funding Guidelines for a Distribution of Operations Funding to meet the operations cost of the Regional Corporation, including the costs of the CSC Optional Service.

S2.6 Assessment of Service Delivery

Each Financial Year, the Trustee must assess the CSC's delivery of the CSC Services following receipt of the CSC's audited annual report or Special Purpose Report (if any) in accordance with the following process:

(a) the Trustee must request feedback from and consult with the Regional Corporations regarding the CSC Services, in particular regarding:

(i) the standard of delivery of CSC Services;

(ii) the ongoing need for the CSC Regional Services; and

(iii) any additional services that should be CSC Services;

(b) the Trustee must consider the CSC's audited annual report or Special Purpose Report (if any);

(c) the Trustee must consult with the Noongar Advisory Company and the Noongar Relationship Committee regarding the CSC's performance; and

(d) the Trustee must raise any concerns or queries with the CSC and provide the CSC with a reasonable opportunity to respond.

S2.7 Modification of Service Delivery

Having regard to the results of an assessment under item S2.6 the Trustee may:

(a) determine that certain Payment Conditions be imposed on the CSC as part of any future Distributions;

(b) determine that a CSC Regional Service be Modified or removed and, if removed, fund the Regional Corporations to obtain the services from a third party as part of the Regional Corporations' operations;

(c) consider (and in its absolute discretion, approve) a request from the CSC for Operations Funding for the forthcoming Financial Year to be increased to assist the CSC to develop its organisational capacity, experience and expertise; and

(d) consider (and in its absolute discretion, approve) a request from the CSC to modify the CSC Core Services and/or the CSC Regional Services for the forthcoming Financial year.

S2.8 Service Delivery Agreements

(a) Services delivered by the CSC to the Regional Corporations must be made by way of written agreement which will set out the nature, timing, conditions and any other relevant aspects of service delivery.

(b) The Trustee must receive a copy of all service agreements entered into between the CSC and the Regional Corporations, and any amendments to those agreements.

Schedule 3 – Regional Corporation Core Functions

S3.1 Principles

The requirements in this Schedule 3 and the following principles apply to the delivery of Regional Corporation Core Functions:

(a) a Regional Corporation must undertake the Regional Corporation Core Functions in accordance with its objects to or for the benefit of the relevant Agreement Group of that Region;

(b) initially, the Regional Corporations are entitled to receive administrative support in the form of CSC Regional Services from the CSC, with the aim of being able to provide or source these services for themselves when the Regional Corporations have the capacity to do so;

(c) the Regional Corporation Core Functions are functions that are critical for the Regional Corporations to provide in order to meet the ambitions of the Noongar Settlement, ILUAs and Trust Deed;

(d) each Regional Corporation may exercise independent discretion as to the most appropriate and effective manner of providing the Regional Corporation Core Functions;

(e) the Trustee is not required to fund a Regional Corporation's costs of delivery of the Regional Corporation Core Functions over and above the Operations Funding approved in accordance with this Deed. Any additional funding is a matter for the sole discretion of the Trustee;

(f) the Trust has limited Operations Funding available and it is essential that each Regional Corporation determines the most efficient manner of delivering the Regional Corporation Core Functions with due care, skill and diligence and in a professional manner; and

(g) the nature and scope of the Regional Corporation Core Functions and the costs of providing the Regional Corporation Core Functions will fluctuate over time.

S3.2 Determining the Regional Corporation Core Functions

(a) The following initial Regional Corporation Core Functions apply until Modified in accordance with item S3.4:

(i) implementing the ILUA for the Region;

(ii) communicating information regarding the Noongar Settlement, ILUAs and the Trust to the Regional Corporation and Agreement Group members in a culturally appropriate manner, and through a range of mediums;

(iii) complying with all governance requirements in accordance with the Regional Corporation's constitution and the CATSI Act;

(iv) participating in the Noongar Corporations Committee;

(v) facilitating cultural decision making processes to ensure that, as best as possible, the right people speak for country in accordance with Traditional Laws and Customs;

(vi) being an advocate for the Agreement Group with key stakeholders;

(vii) developing cultural and community programs within the Region;

(viii) managing lands and developing land management programs for the Noongar Land Estate within the Region;

(ix) engaging in co-operative and joint management of the conservation estate, and other lands where appropriate;

(x) developing heritage programs and ensuring proper implementation of the heritage provisions of the ILUA;

(xi) providing support to the Agreement Group in identifying economic participation opportunities; and

(xii) working with the Trustee and the CSC to identify and progress property development opportunities across the Noongar Land Estate within the Region.

(b) After the Start-Up Period, the Regional Corporation Core Functions include obtaining the CSC Regional Services relevant to the Region.

S3.3 Assessment of Service Delivery

Each Financial Year, the Trustee must assess each Regional Corporation's delivery of the Regional Corporation Core Functions following receipt of the Regional Corporation's audited annual reports or Special Purpose Report (if any) in accordance with the following process:

(a) the Trustee must request feedback from and consult with the Regional Corporation, in particular regarding:

(i) the standard of delivery of Regional Corporation Core Functions;

(ii) the ongoing need for the Regional Corporation Core Functions; and

(iii) any additional functions that should be Regional Corporation Core Functions;

(b) the Trustee must consider the Regional Corporation's audited annual reports or Special Purpose Report (if any);

(c) the Trustee must consult with the Noongar Advisory Company and the CSC regarding the Regional Corporation's performance; and

(d) the Trustee must raise any concerns or queries with the Regional Corporation and provide the Regional Corporation with a reasonable opportunity to respond.

S3.4 Modification of Service Delivery

Having regard to the results of an assessment under this item S3.3 the Trustee may:

(a) determine that certain Payment Conditions be imposed on the Regional Corporation as part of any future Distributions;

(b) determine that a Regional Corporation Core Function be Modified or removed; and

(c) consider a request from the Regional Corporation for Operations Funding for the forthcoming Financial Year to be increased to assist the Regional Corporation to develop its organisational capacity, experience and expertise.

Schedule 4 – Committee Meeting Rules

S4.1 Chair and Secretary

(a) Subject to any specific requirement to the contrary in this Deed, at the first convened meeting of a committee, the members of the committee shall elect:

(i) a Chair, from among the committee members; and

(ii) a Secretary, from among the committee members or nominated by the Trustee.

(b) A person elected as Chair or Secretary under this clause S4.1 shall hold office until the election of a successor.

(c) The Chair of the committee shall preside at all committee meetings at which the Chair is present.

(d) The Chair has a right to vote at meetings.

(e) The Secretary is responsible for keeping minutes of each meeting.

S4.2 Holding Committee Meetings

(a) A committee must meet at least once each Financial Year or as otherwise directed by the Trustee.

(b) Meetings of the committee shall be held at such times and places as the committee determines.

S4.3 Attendance at Committee Meetings

A committee meeting may be attended by:

(a) the committee members; and

(b) any person that the committee invites to attend a committee meeting.

S4.4 Quorum and Voting

(a) No business shall be transacted at any meeting of a committee unless at least a quorum of committee members is present for the whole time during which the business is transacted.

(b) At a meeting of a committee:

(i) not less than half of the committee members form a quorum; and

(ii) unless otherwise provided in this Deed, every question before the committee must be determined by a majority of the votes of the committee members present and voting on that question.

S4.5 Meeting Business

(a) The content of the agenda for a committee meeting is to be determined by the Chair.

(b) A committee member may apply to the Chair to have an item placed on the agenda.

S4.6 Minutes

(a) The Secretary is responsible for keeping minutes of each meeting.

(b) At each meeting:

(i) the minutes of the previous meeting must be distributed to each committee member;

(ii) if necessary, the minutes may be Modified; and

(iii) the minutes must be signed and dated by the Chair confirming the minutes as a true record of the proceedings.

S4.7 Reporting to the Trustee

The Chair of the committee must:

(a) provide the minutes of each meeting of that committee to the Trustee; and

(b) provide the recommendations of the committee to the Trustee in connection with the purpose for which the committee was established and as requested or directed by the Trustee.

S4.8 Use of Technology

(a) With the consent of all of the committee members, the committee may hold a meeting at two or more venues using any technology that gives the committee members as a whole a reasonable opportunity to participate.

(b) The consent may be a standing one.

(c) A committee member may only withdraw his or her consent within a reasonable period before the meeting.

Schedule 5 – Trustee's Powers

Unless otherwise inconsistent with this Deed, and in addition to any power given to the Trustee at law, the Trustee may:

(a) apply or accumulate the income derived by the Trust in any of the modes authorised by this Deed;

(b) allow any investment or asset at any time forming part of the Trust Fund to remain in the original form which it was received by the Trustee and at any time to sell, call in or convert the investment or asset into money or other securities or property;

(c) change an investment for any others or vary the terms and conditions on which an investment is held;

(d) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;

(e) borrow or raise or secure the payment of money and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated excluding all assets that constitute the Future Fund Capital Base;

(f) take and act on the opinion of a barrister or solicitor practising in Australia in relation to the interpretation or effect of this Deed or any of the trusts or powers of this Deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;

(g) take any action for the adequate protection or insurance of any part of the Trust Fund;

(h) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;

(i) subject to the trusts of this Deed, generally:

(i) perform any administrative act; and

(ii) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this Deed, as though the Trustee were the absolute owner of the Trust Fund;

(j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;

(k) accept as part of the Trust Fund any gifts (by will or otherwise), deductible contributions, donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, Apply or deal with them in any way that the Trustee may invest, Apply or deal with the Trust Fund under this Deed;

(l) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), deductible contribution, donation, settlement or other disposition in money, moneys worth or property;

(m) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Noongar Entity to occupy the property on the terms and conditions the Trustee thinks fit;

(n) manage any Management Order it holds or which is held by the Land Sub in accordance with the terms and conditions of the Management Order including (if applicable) allowing any Eligible Noongar Entity to occupy the property as provided in this Trust Deed;

(o) manage any reserve land for the reserve purpose in accordance with the Management Order held by the Land Sub, which may include granting a lease of the reserve at the request of the Relevant Regional Corporation;

(p) establish any fund, authority, institution, company, society, association or trust in furtherance of the Trust Purpose, in consultation with the Noongar Advisory Company and the Investment Committee;

(q) do all other things incidental to the exercise of the Trustee's powers under this Deed; and

(r) hold, manage, invest, lease, sell, develop or deal in any way with any interest on the Housing Land Fund provided that the existence of such power of the Trustee is consistent with the Housing Land Fund purpose in clause 12 of the Trust Deed.

Schedule 6 – Agreement Group Endorsement

(a) Where an Agreement Group Endorsement is required under this Deed, the procedure in this Schedule 6 applies.

(b) An Agreement Group may give an Agreement Group Endorsement by delivering an Agreement Group Endorsement to the Trustee.

(c) An Agreement Group Endorsement means a written endorsement in the form below which the Trustee in its absolute discretion is satisfied:

(i) was prepared pursuant to a resolution duly passed at a meeting of the Agreement Group called by:

A. the Relevant Regional Corporation; or

B. where there is no Relevant Regional Corporation or where the Relevant Regional Corporation is unable or unwilling to call a meeting of the Agreement Group, the Facilitator; and

(ii) has been duly signed on behalf of the Agreement Group by the persons authorised to do so by the Agreement Group.

(d) In obtaining Agreement Group Endorsement the entity calling the Agreement Group meeting must comply with the following requirements:

(i) written notice must be provided to the members of the Relevant Regional Corporation (if applicable) and members of the Agreement Group at least 21 days prior to the meeting;

(ii) notice must be given by sending it by post and by public advertising. Where a notice is sent by mail, it is taken to be received 3 days after it is posted;

(iii) notice may also be given to an individual personally or by sending it by fax or other electronic means;

(iv) that notice must:

A. set out the place, date and time of the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to do this);

B. state the purpose of the Agreement Group meeting;

C. set out the proposed resolutions to be considered at the Agreement Group meeting;

D. be worded and presented clearly and concisely; and

E. include background and supporting materials relevant to the proposed resolution.

(e) An attendance list and minutes of the meeting (recording discussion, resolutions made and the results of any decision making process) must be kept by the Facilitator and made available for inspection by the Agreement Group members and the Trustee.

(f) The Trustee is entitled to rely on a document purporting to be an Agreement Group Endorsement and believed by the Trustee, acting reasonably and in good faith, to be valid and genuine, and to have been duly signed on behalf of the Agreement Group, without the need for the Trustee to enquire as to or verify the validity of the Agreement Group Endorsement or the matters referred to in it (however this does not limit the Trustee's discretion to do so).

(g) If the Trustee is unable to determine to the Trustee's satisfaction the meaning of an Agreement Group Endorsement or has reason to question whether an Agreement Group Endorsement is valid, the Trustee may disregard the Agreement Group Endorsement and request the Agreement Group to clarify the matter.

(h) The Trustee has no duties or responsibilities except those expressly set out in this Deed and will not be taken to owe any fiduciary duty to any party (including the Agreement Group) other than as required by law.

Form of Agreement Group Endorsement

TO: **[insert Trustee name]**	
FROM: **[insert Agreement Group name]**	

The Agreement Group delivers the following Agreement Group Endorsement to the Trustee for the purposes of Schedule 6 of the Noongar Boodja Trust Deed:

[insert content of Agreement Group Endorsement]

1. The signatories confirm that this Agreement Group Endorsement has been prepared pursuant to a resolution duly passed at a meeting of the Agreement Group.

2. The meeting was held on _____at _____**[insert date and place of meeting].**

3. The following documents are **enclosed** with this Agreement Group Endorsement:

   a. written notice of the meeting;

   b. the list of attendees of the meeting; and

   c. minutes of the meeting.

4. The signatories warrant that they are authorised to give the above Agreement Group Endorsement, being the persons authorised to do so by the Agreement Group by a resolution made at the meeting.

Signed for and on behalf of the Agreement Group by the following authorised persons:		
Signature	Name (please print)	Date
Signature	Name (please print)	Date
Facilitator's Authorisation		
_____, being the Facilitator duly appointed in accordance with Schedule 6 of the Noongar Boodja Trust Deed, authorise this Agreement Group Endorsement and confirm:		

(a) the members of the [Relevant Regional Corporation / Agreement Group] were provided with at least 21 days written notice of the meeting;

(b) written notice was given to members by [post / fax / other electronic means / personally]; and

(c) the notice set out:

(i) the place, date and time of the meeting [and the technology that will be used at the meeting];

(ii) the purpose of the Agreement Group Meeting; and

(iii) the proposed resolutions to be considered including background and supporting materials relevant to the proposed resolutions.

Signed for and on behalf of the Facilitator by the following authorised person:

Signature	Name (please print)	Date

Schedule 7 – Dedicated Trustee Requirements

S7.1 Operational Requirements

In order to be eligible for appointment as the Dedicated Trustee and at all times whilst in office as Trustee, a Nominee Entity must:

(a) have been nominated by the Noongar Corporations Committee at least 2 years prior to appointment;

(b) not be suffering an Insolvency Event;

(c) have recruited and retained an appropriately qualified chief executive officer;

(d) be operating in accordance with an appropriate governance structure which includes:

  (i) a code of conduct;

  (ii) a delegations framework;

  (iii) operational policies and procedures; and

  (iv) an organisational chart;

(e) be operating in accordance with an appropriate:

  (i) business plan;

  (ii) operating budget; and

  (iii) strategic plan;

(f) have an Australian Business Number;

(g) be registered with the Australian Taxation Office for GST;

(h) be endorsed by the Commissioner of Taxation as income tax exempt under Sub-division 50-B of the *Income Tax Assessment Act 1997* (Cth);

(i) have an appropriate accounting system in place;

(j) have engaged an appropriately qualified accountant, auditor and lawyer;

(k) be operating from a functioning office with all necessary infrastructure and equipment in place;

(l) have recruited and retained sufficient administrative staff having regard to the functions and operations of the Trustee;

(m) have appropriate employment contracts in place for all staff;

(n) have attended at least 8 Trustee and Nominee Entity quarterly meetings in accordance with clause 13.2.4(e);

(o) have provided the Trustee with a copy of the certificate of incorporation of the Nominee Entity issued by the Australian Securities and Investments Commission;

(p) have provided the Trustee with a copy of the constitution of the Nominee Entity;

(q) have provided the Trustee with written submissions as to the manner in which the Nominee Entity has met the requirements in this Schedule 7; and

(r) have obtained written confirmation from the Trustee that, in the Trustee's reasonable opinion, the Nominee Entity meets all of the requirements in this Schedule 7;

S7.2 Structural Requirements

In order to be eligible for appointment as the Dedicated Trustee and at all times whilst in office as the Trustee, a Nominee Entity must comply with the structural requirements of this clause S7.2.

S7.2.1 Type of Company

The Nominee Entity must be a public company limited by guarantee in accordance with section 112(1) of the Corporations Act.

S7.2.2 Constitution

The constitution of the Nominee Entity must:

(a) be a comprehensive written document containing all of the internal governance rules of the Nominee Entity;

(b) provide for the matters set out in clauses S7.2.3 to S7.2.11; and

(c) be consistent with the provisions of the Corporations Act and this Deed.

S7.2.3 Objects

The objects of the Nominee Entity must include but are not limited to the following:

(a) to accept appointment and perform the function of trustee of this Trust; and

(b) any other function or purpose that is consistent with or furthers the objects of this Trust.

S7.2.4 Not-for-Profit

The Nominee Entity's constitution must provide that:

(a) subject to clause S7.2.4(b), the income and property of the Nominee Entity must be applied solely towards the Nominee Entity's objects and no part of that income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, profit, fee or otherwise, to any director or member of the Nominee Entity;

(b) clause S7.2.4(a) does not prohibit making a payment approved by the Nominee Entity's board:

(i) for out-of-pocket expenses incurred by a director in performing a duty as a director of the Nominee Entity;

(ii) for a service rendered to the Nominee Entity by a director in a professional or technical capacity, other than in the capacity as a director of the Nominee Entity, where:

A. the provision of the service has the prior approval of the Nominee Entity's board; and

B. the amount payable is not more than an amount which commercially would constitute reasonable payment for the services;

(iii) for reasonable remuneration of directors pursuant to the Nominee Entity's constitution;

(iv) in good faith to any member or director for goods supplied to the Nominee Entity in the ordinary and usual course of business;

(v) of reasonable and proper interest on money borrowed from a member or director by the Nominee Entity;

(vi) of reasonable and proper rent for premises let by any member or director to the Nominee Entity; or

(vii) for indemnification of or payment of premiums on contracts of insurance for any director to the extent permitted by law and the Nominee Entity's constitution.

S7.2.5 Membership

The only members of the Nominee Entity must be the Eligible Noongar Entities.

S7.2.6 Members' Meetings

(a) Quorum at a general meeting must be a majority of the members entitled to vote and be present at the general meeting.

(b) Resolutions at a general meeting must be put to a vote and decided by a simple majority of votes cast in favour of the resolution.

S7.2.7 Board of Directors

(a) The directors of the Nominee Entity must comprise 5 directors qualified in accordance with clause S7.2.8, of which:

(i) 2 directors must be Expert representatives of the Noongar Community nominated by the Nominations Committee (**Noongar Directors**);

(ii) 2 directors must be Independent and nominated by the Nominations Committee (**Independent Directors**); and

(iii) 1 director must be nominated by the State.

(b) A director of the Nominee Entity must not be an employee, officer, director or committee member of an Eligible Noongar Entity;

(c) All directors must be confirmed by the Nominations Committee as being eligible for appointment in accordance with clause 16.2.

(d) The Nominee Entity must ensure that as far as possible, the directors offer diverse skills and experience.

S7.2.8 Qualifications of Directors

(a) A person is only qualified for appointment as a director of the Nominee Entity if the person:

(i) has completed a director's course approved by the Australian Institute of Company Directors (**AICD**) or a suitable successor or equivalent to the AICD;

(ii) has as a minimum, 5 years' demonstrated experience as a member of a board of directors or management of an Australian company governed by the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or Government Trading Entities or Statutory Authority and can demonstrate a preparedness to question, challenge and critique and a willingness to understand and to commit to the highest standards of governance;

(iii) is financially literate;

(iv) possesses leadership experience and qualities reflecting a proven record of accomplishment and ability to work with others;

(v) does not have commitments that would conflict with the commitments of a director of the Nominee Entity;

(vi) is of high repute and recognised integrity;

(vii) is not a person who is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director;

(viii) has not been disqualified (either automatically or by Court order) from managing corporations under:

A. Part 2D.6 of the Corporations Act, without permission or leave to manage the Nominee Entity being granted under section 206F or 206G; or

B. Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), without permission or leave to manage the Nominee Entity being granted under section 279-30 or 279-35;

(ix) has not been disqualified (either automatically or by Court order) from managing corporations, or from doing anything else contemplated by the

role of director, under any other applicable law;

(x) is not a person who has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct (including fraud), other than where:

A. 20 years has passed from the time of conviction; or

B. 10 years has passed from the time of conviction and either:

a. the conduct resulted in a term of actual imprisonment of less than 3 months; or

b. the conduct resulted in a fine of less than $5,000; and

(xi) is a Responsible Person (as that term is defined by the Commissioner of Taxation) and has such other characteristics as may be considered appropriate for membership on the board of directors.

(b) A director must not be an employee of the Nominee Entity.

S7.2.9 Audit

(a) The Nominee Entity must in each year whilst in office as the Trustee:

(i) have its financial statements and financial records audited by a qualified and Independent person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act;

(ii) procure a report by its auditor as to whether the financial statements and financial records of the Regional Corporation for the previous Financial Year are fair and accurate according to Australian Accounting Standards (being all accounting standards required by an Australian law, or the standard or principle as prepared by the Australian Accounting Standards Board from time to time); and

(iii) provide a copy of its audit report as soon as practicable after receipt to the:

A. Eligible Noongar Entities;

B. State; and

C. Noongar Advisory Company.

(b) The Nominee Entity must have been audited in a similar manner as described in clause S7.2.9(a) at least once prior to being appointed as Trustee.

S7.2.10 Amendment of Constitution

At all times whilst in office as the Trustee, the constitution of the Nominee Entity must not be amended without the prior written approval of the:

(a) Noongar Relationship Committee;

(b) State; and

(c) Noongar Advisory Company.

S7.2.11 Directors' Fees

(a) Directors are entitled to such reasonable remuneration as the members decide in general meeting, in consultation with the Nominations Committee.

(b) Directors' remuneration must be measured against, and must not exceed, the professional fees ordinarily charged by persons providing such services on an arm's length basis, taking into account the skill, experience and ability of the relevant director.

Schedule 8 – Deed of Appointment of New Trustee

Date:

Parties

[Insert name] (ACN) (**Outgoing Trustee**) of [Insert address]

And

[Insert name] (ACN) (**Incoming Trustee**) of [Insert address]

And

[Insert name] (**Appointors**) of [Insert address]

of [Insert address]

Background

A. By Deed of Settlement dated [Insert date] (**Trust Deed**) made between [Insert name] as Settlor and [Insert name] (as Trustee), the Noongar Boodja Trust was established (**Trust**).

B. The Outgoing Trustee is the current Trustee for the Trust.

C. The Appointors are the current Appointors for the Trust.

D. The Appointors have jointly resolved to appoint the Incoming Trustee as Trustee to replace the Outgoing Trustee, subject to the Incoming Trustee accepting such appointment with effect from the Effective Date.

E. Pursuant to clause 13.4 of the Trust Deed, the Appointors have the power, acting jointly, to remove a Trustee and appoint a new Trustee or new Trustees for the Trust (**Appointment Power**).

F. Pursuant to clause 13.4(b) of the Trust Deed, before exercising the Appointment Power, the Appointors must consult with the:

   a. Noongar Advisory Company; and

   b. Outgoing Trustee.

Now this Deed witnesses:

1. Definitions

(a) The terms used in this Deed that are defined in the Trust Deed have the same meaning as defined in the Trust Deed unless a contrary meaning is indicated.

(b) The terms of the Trust Deed are to prevail to the extent of any inconsistency with this Deed.

(c) In this Deed, unless the context requires otherwise, the following expressions have the following meanings:

Effective Date	means the date of execution of this Deed;
Incoming Trustee	means [insert name]; and
Outgoing Trustee	means [insert name].

2. Removal and Appointment

With effect from the Effective Date, the Appointors exercise the Appointment Power to appoint the Incoming Trustee as the replacement for the Outgoing Trustee for the Trust on the conditions of appointment outlined at clause 4.

3. Acceptance of Appointment

(a) Subject to the conditions of appointment contained in clause 4, the Incoming Trustee:

(i) accepts its appointment to act as Trustee for the Trust as made by the Appointors under clause 2; and

(ii) agrees to perform all of the duties and responsibilities of the Trustee under the terms of the Trust Deed and according to law.

(b) The Incoming Trustee confirms that it is a Professional Trustee Company or a Dedicated Trustee.

4. Conditions of Appointment

4.1 General Conditions

In addition to any other rights or obligations arising under this Deed and the Trust Deed, the parties agree that the appointment of the Incoming Trustee as Trustee for the Trust is subject to the following conditions:

(a) [Insert any special conditions].

4.2 Remuneration of Trustee

The Incoming Trustee is entitled to charge and be paid remuneration from the Trust Fund in the amounts specified in the remuneration schedule annexed to this Deed in **Schedule 1** in accordance with clause 23.1 of the Trust Deed.

5. Covenant by Outgoing Trustee

The Outgoing Trustee covenants that it will:

(a) immediately provide all books and financial records and other information in its possession to the Incoming Trustee;

(b) sign all documents and do all other things reasonably required to enable the Incoming Trustee to assume the office of and to carry out the duties as Trustee for the Trust;

(c) transfer all of the shares it holds in:

(i) Land Sub;

(ii) Noongar Advisory Company; and

(iii) Noongar Boodja Development Corporation (if any),

to the Incoming Trustee; and

(d) do all things necessary to vest ownership and control of the Trust Fund in the Incoming Trustee and transfer legal title in the assets of the Trust to the Incoming Trustee.

6. Indemnity by Incoming Trustee

The Incoming Trustee agrees to fully indemnify the Outgoing Trustee against all debts and liabilities which the Outgoing Trustee has properly incurred whilst acting as Trustee for the Trust under and in accordance with the provisions of the Trust Deed and which are unpaid at the time of the Outgoing Trustee's removal as Trustee and, subject to the Incoming Trustee being fully indemnified out of the assets of the Trust, the Incoming Trustee covenants and agrees to be responsible for and to duly pay all such debts and all future debts and liabilities in relation to the Trust in accordance with the provisions of the Trust Deed.

7. Release of Outgoing Trustee

(a) Pursuant to clause 13.4(d) of the Trust Deed, the Appointors consider that the Outgoing Trustee has fulfilled its obligations under the Trust.

(b) It is agreed that subject to clause 6 of this Deed, the Outgoing Trustee is from the time of its removal from the office of Trustee discharged from further performance of the obligations and duties imposed upon it by reason of acting as Trustee for the Trust.

8. Consultation

The Appointors acknowledge that they have consulted with the:

(a) Noongar Advisory Company; and

(b) Outgoing Trustee.

9. Trustee Undertaking

The Incoming Trustee undertakes to endorse on or attach to or retain with the Trust Deed a copy of this Deed.

10. Rights under Trust Deed

The provisions contained in this Deed do not affect the rights and obligations which any of the parties may have under the terms of the Trust Deed.

11. Costs and Transfer Duty

All solicitors' costs of the instructions for and preparation of this Deed and all transfer duty will be paid out of the Trust Fund.

12. Further Assurances

Each party shall sign, execute and do such documents, deeds and things as the other parties shall reasonably require for completely effectuating the provisions of this Deed.

13. Governing Law

This Deed is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Executed by the parties as a deed.

Executed by
[Insert Name]
(ACN)
pursuant to section 127 of the
Corporations Act

……	……
Director	Director/Secretary
……	……
Full name (please print)	Full name (please print)

Executed by
[Insert Name]
(ACN)
pursuant to section 127 of the
Corporations Act

……	……
Director	Director/Secretary
……	……
Full name (please print)	Full name (please print)

Signed by [Insert Name] in [his/her] capacity as Appointor of the Trust in the presence of:

……
[Insert name]

……
Signature of Witness

……
Name of Witness

……
Address of Witness

……
Occupation of Witness

Signed by [Insert Name] in [his/her] capacity as Appointor of the Trust in the presence of:

……
[Insert name]

……
Signature of Witness

……
Name of Witness

……
Address of Witness

……
Occupation of Witness

Deed of Appointment of New Trustee - Schedule 1 (Trustee's Remuneration)

[insert Trustee's remuneration schedule]

Schedule 9 – First Trustee's Remuneration

Each section of this Schedule 9 includes a box that summarises what the section is about. These summaries are for background information only, and do not form part of the Trust Deed.

S9.1 Definitions

These are the meanings of words and concepts referred to in this Schedule 9.

(a) Words and phrases used in this Schedule 9 which have a defined meaning in the Trust Deed have the same meaning as in the Trust Deed, unless the context indicates otherwise.

(b) In this Schedule 9, unless the context indicates otherwise, the following expressions have the following meanings:

(i) **Aboriginal Business Directory Western Australian** means the directory available as at the date of this Deed at https://abdwa.icn.org.au/;

(ii) **Conditional Tasks** has the meaning given in item S9.4.2(a);

(iii) **Expenses** means any fees, costs and expenses;

(iv) **External Costs** has the meaning given in item S9.4.3(a);

(v) **External Procurement Process** is the process of that name specified in the Regulations;

(vi) **Fee** has the meaning given in item S9.3.2(a).

(vii) **Internal Costs** has the meaning given in item S9.4.1(b);

(viii) **Internal Cost Process** is the process of that name specified in the Regulations;

(ix) **Noongar Business** means an organisation that is an Eligible Noongar Entity or is:

A. owned and run by or for Noongar Community members, including not-for-profit organisations; and

B. registered on a suitable directory that provides the Trustee with confidence that the business is owned and run by a majority Aboriginal interest, such as Aboriginal Business Directory Western Australia or Supply Nation's Indigenous Business Direct;

(x) **Rate Card** has the meaning given in item S9.4.2(b);

(xi) **Reasonable and Proper** in relation to costs and expenses means costs and expenses that are, in the opinion of a reasonable person having regard to the surrounding circumstances:

A. incurred for the benefit of the Trust;

B. incurred honestly in good faith, and not improperly;

C. not unnecessary, extravagant or excessive;

D. for work properly undertaken, having regard to the Trustee's duty to perform its work with reasonable care, skill and diligence; and

E. incurred prudently in the discharge of the Trustee's proper duties and not by virtue of the Trustee's negligence or mistake;

(xii) **Regulations** means the regulations approved from time to time under item S9.2 and this Schedule 9;

(xiii) **Remuneration** includes the Fee and Expenses;

(xiv) **Remuneration Auditor** means the person appointed as the Remuneration Auditor under item S9.8;

(xv) **Residual Current Device** means a current-activated circuit-breaker used as a safety device for mains-operated electrical tools and appliances;

(xvi) **Routine Tasks** has the meaning given in item S9.3.3(a);

(xvii) **Supply Nation's Indigenous Business Direct** means the database of Indigenous businesses managed by Supply Nation and available as at the date of this Deed at https://supplynation.org.au/; and

(xviii) **Tasks** means activities, tasks, services and functions of the Trustee in relation to the Trust.

S9.2 Regulations

There are Regulations that regulate how this Schedule 9 is managed. The Regulations do not form part of this Schedule 9. The Regulations cannot be changed without the approval of the Noongar Relationship Committee.

(a) The Trustee must comply with the Regulations made in relation to this Schedule 9.

(b) The first Regulations shall be agreed in writing between the Trustee, the State and the South West Aboriginal Land and Sea Council.

(c) The Noongar Relationship Committee may propose Modifications to the Regulations to the Trustee from time to time and not more than twice per year.

(d) The Trustee may Modify the Regulations from time to time **provided that** the:

(i) Modifications to the Regulations must be consistent with this Schedule 9 and in accordance with the terms of this Deed;

(ii) Trustee has consulted with and obtained the consent of the Noongar Relationship Committee in relation to the proposed Modifications to the Regulations; and

(iii) Trustee provides a copy of the Modified Regulations to the:

A. Auditor of the Trust;

B. Remuneration Auditor;

C. State, where the Modification occurs during the State Contribution Period;

D. Noongar Advisory Company; and

E. Noongar Relationship Committee.

S9.3 Remuneration

This section is about how the Trustee's fee for service is calculated.

S9.3.1 Remuneration Principles

There are core principles relating to the Trustee's payment, that the Trustee has agreed to.

This Schedule 9 has been agreed on the basis that the Trustee's remuneration should:

(a) include appropriate pricing incentives to encourage the Trustee to seek and achieve agreed outcomes;

(b) ensure that regular outcomes based assessment is implemented to ensure that services of the Trustee are provided to a sufficient standard;

(c) ensure that Key Performance Indicators set for the Trustee are fair and transparent subject to periodic review over the 12 year State Contribution Period;

(d) ensure that stakeholders are clear on exactly what services are included from a fixed percentage fee model;

(e) provide that failure to meet Key Performance Indicators may trigger an independent performance review of the Trustee as set out in this Schedule 9;

(f) ensure that the Trustee's accountability is maintained in relation to any external service providers;

(g) maximise transparency in regard to costs and expenses that are likely to be incurred by the Trust and the Trustee; and

(h) ensure that the Trustee is not in a position to incur excessive or unwarranted costs and expenses.

S9.3.2 Annual Management Fee

This section says that the Trustee may charge an annual fee which is calculated according to the value of the Noongar Future Fund. The formula for calculating the Fee stays the same for the whole time that the Trustee is appointed.

(a) The Trustee may charge the Trust an annual management fee (**Fee**) during the term of the Trustee's appointment, being the percentage of the gross value of the Noongar Future Fund as shown in the table below, calculated daily and charged monthly in arrears.

(b) The Fee is not calculated by reference to the value of any of the Cultural Land Fund, Development Land Fund, Housing Land Fund, Operations Fund, Special Projects Fund or any other sub fund of the Trust.

(c) The percentage rates comprising the Fee are fixed for the term of the Trustee's appointment.

Min Fund	Max Fund	Annual Management Fee % (incl GST)	Max Fee (incl. GST)	Cumulative Fee (incl. GST)	Cumulative Fee Average % (incl. GST)
$0	$50,000,000	2.530%	$1,265,000	$1,265,000	2.530%
$50,000.001	$100,000,000	0.195%	$97,500	$1,362,500	1.362%
$100,000,001	$250,000,000	0.110%	$165,000	$1,527,500	0.611%
$250,000,001	$500,000,000	0.100%	$250,000	$1,777,500	0.355%
$500,000,001	$1,000,000,000	0.080%	$400,000	$2,177,500	0.218%
$1,000,000,001	$2,000,000,000	0.033%	$330,000	$2,507,500	0.125%

S9.3.3 Routine Tasks

The Trustee is paid their fee in exchange for acting as Trustee of the Trust including completing a broad range of tasks, which are called Routine Tasks.

(a) In this Schedule 9, **Routine Tasks** means the Tasks specified as Routine Tasks in the Regulations, as amended in accordance with the process specified in the Regulations.

(b) The Trustee is paid the Fee as payment for acting as Trustee of the Trust including completion and delivery of all Routine Tasks.

(c) Subject to clause S9.3.3(d), Routine Tasks include all work, costs, liabilities and expenses of any description that, directly or indirectly, in any way arise in respect of, relating to or in connection with a Routine Task including external or third party costs.

(d) The Trustee is not permitted to charge any additional fees or costs in relation to Routine Tasks unless otherwise specifically provided for in this Schedule 9 or the Regulations, such as an External Cost .

S9.4 Expenses

There are core principles relating to the Trustee's recovery of Expenses that the Trustee has agreed to.

S9.4.1 Expense Principles

This section is about extra charges the Trustee can recover from the Trust (in addition to the Fee), either for the Trustee's own work (Internal Costs) or to pay third parties (External Costs).

(a) The Trustee may only charge Expenses (to be paid out of the Trust Fund) where:

(i) the Expense relates to:

A. an External Cost for a Routine Task as specified in item S9.4.3;

B. an External Cost for a Routine Task relating to holding and managing Cultural Land as specified in item S9.4.4; or

C. a Conditional Task; and

(ii) the Expense is Reasonable and Proper; and

(iii) in the case of Internal Costs, they are incurred and charged in accordance with the Internal Cost Process; and

(iv) in the case of External Costs, they are incurred and charged in accordance with the External Procurement Process.

(b) In this Schedule 9, **Internal Costs** means fees (in addition to the Fee) the Trustee charges for the Trustee's own staff undertaking work on Conditional Tasks.

(c) The Internal Cost Process must be specified in the Regulations and must require the Internal Costs to be:

(i) provided for in the Trustee Expense Budget unless otherwise approved in accordance with the Regulations; and

(ii) charged in accordance with the Rate Card.

(d) The Trustee must:

(i) develop a policy for implementing Noongar Business procurement;

(ii) when developing the Strategic Plan and Trustee Expense Budget, set progressive annual targets for procurement from Noongar Businesses of goods and services for the Trust; and

(iii) report annually in the Trustee's Annual Report on the Trustee's progress against the targets.

(e) The External Procurement Process must be specified in the Regulations and must always require the Trustee, on each occasion it engages a provider of goods or services to the Trust, to reasonably investigate whether there is a Noongar Business that can be engaged to provide those goods or services.

(f) When considering incurring Expenses, the Trustee must have regard to the following overarching principles:

Principle	Non-Binding Practical Example
The Expense Adds Value through Innovation, Investment & Efficiency	
Where an innovative solution is identified, the Trustee should be able to invest in future efficiencies of the Trust.	Developing a customised financial reporting platform/framework for the different stakeholders in the governance structure, that can then be utilised in-house by the Trustee going forward.
One-off (or infrequent) upfront investments that build capability/capacity/sustainability of the Trust that are distinct from, and add more value than, recurring / ongoing / repetitive costs in relation to the same solution.	Building a fit for purpose website in a manner that enables ongoing updates to be completed in-house by the Trustee going forward.
The Trustee should look for opportunities to leverage stakeholder interactions/meetings to generate the most impact and minimise costs	Addressing all Agreement Group decisions at the Annual General Meetings, as opposed to seeking additional Agreement Group meetings throughout the year.
Expertise is Required – Cost Effective	
The Trustee may need to engage external expertise where it is not cost effective or appropriate for the work to be completed in-house by the Trustee.	
The Expense Provides Accountability and Transparency	
The Trustee may need to engage external support where the Trustee recognises the need for increased or specialised reporting, or accountability and transparency measures.	
The Expense Builds Capacity	
There may be External Costs that will contribute meaningfully to the long term sustainability of the Trust.	Engaging Regional Corporations to manage Cultural Land rather than other service providers.

There may be External Costs that support Noongar Advisory Company to transition to the role of trustee.	

S9.4.2 Trustee's Rate Card – Conditional Tasks

There are some tasks the Trustee may need to complete that are not routine. These are called Conditional Tasks. If the Trustee charges for Conditional Tasks, it may only charge the fees set out in the Trustee's rate card.

(a) In the Schedule 9, **Conditional Tasks** mean any Tasks that are not Routine Tasks and includes those tasks specified as Conditional Tasks in Appendix B of the Regulations, as amended in accordance with the process specified in the Regulations.

(b) Subject to the Trustee's compliance with this Schedule 9 and the Regulations, the Trustee may charge its hourly rates for undertaking Conditional Tasks as set out in the following rate card (**Rate Card**):

Level	Role / Title	Hourly Rate		Max. Daily Rate	
		Excl. GST ($)	Incl. GST ($)	Excl. GST ($)	Incl. GST ($)
A	Senior Executive	$600.00	$660.00	$4,800.00	$5,280.00
B	Cultural Adviser	$600.00	$660.00	$4,800.00	$5,280.00
C	Senior Relationship Manager	$427.27	$470.00	$3,418.18	$3,760.00
D	Property and Finance Manager	$500.00	$550.00	$4,000.00	$4,400.00
E	Property Manager	$400.00	$440.00	$3,200.00	$3,520.00
F	People and Culture Team	$400.00	$440.00	$3,200.00	$3,520.00
G	Trustee and Investment Advisory	$386.36	$425.00	$3,090.90	$3,400.00
H	Accounting Advisory	$527.27	$580.00	$4,218.18	$4,640.00
I	Legal services	$427.27	$470.00	$3,148.18	$3,760.00
J	Administrative	$240.90	$265.00	$1,927.27	$2,120.00

(c) The Trustee may review the rates in the Rate Card only in accordance with item S9.7.

S9.4.3 External Costs for Routine Tasks

Usually the Trustee is not permitted to charge External Costs relating to Routine Tasks. However there are some specific costs that the Trustee is permitted to pay from the Trust or reimburse itself for.

(a) In this Schedule 9, **External Costs** means Expenses payable to a third party outside of the Trustee for providing goods or services to the Trust.

(b) The Trustee is entitled to be reimbursed from the Trust, or pay from the Trust, External Costs relating to Routine Tasks in respect of the matters set out in item S9.4.3(c), provided that the Trustee:

(i) can demonstrate that the External Cost is in furtherance of an Expense Principle set out in S9.4.1(f); and

(ii) otherwise complies with the requirements in Schedule 9 and the Regulations when engaging third parties.

(c) The External Costs relating to Routine Costs for the purpose of item S9.4.3(b) are:

(i) meeting costs of the Noongar Advisory Company, Noongar Relationship Committee, Nominations Committee and Investment Committee;

(ii) specialist property development advice in respect of managing, investing and developing Development Land and Housing Land;

(iii) costs of developing Development Land such as design, drafting, earthworks, building costs, materials, legal costs, financing costs etc.;

(iv) investment management fees in respect of investing the Trust Fund;

(v) property management costs including but not limited to tenant management services, insurance, rates, taxes, strata fees, all outgoings for which the tenant is not responsible including water, gas and electricity, maintenance, refurbishment and repairs, compliance costs as required by legislation or the Trustee (e.g. Residual Current Devices and fire alarms), development costs, cost of the sale and purchase in respect of Housing Land, to the extent not otherwise set off against rental income;

(vi) property valuation fees;

(vii) auditing fees (both financial statements and trust compliance as applicable) for each of the Trust, Land Sub, Operations Fund and Noongar Advisory Company;

(viii) the fees of the Remuneration Auditor and the assessor of the Key Performance Indicators;

(ix) costs of the information technology systems including for website design, and maintenance, application management software and IT licences. This does not include costs of preparing content and copy;

(x) regulatory compliance fees such as ASIC fees;

(xi) the graphic design costs for communication materials such as booklets, fact sheets and brochures of a technical and detailed level,

as distinct from day to day communication materials. This does not include costs of preparing content and copy;

(xii) printing and postage costs where a large communication campaign is required as distinct from day to day matters;

(xiii) expert legal advice fees in relation to particularly complex or important issues for which the Trustee does not have the requisite legal skill set internally or it is in the Trusts' best interests to seek external advice; and

(xiv) any other expert advice the acquisition of which the Trustee considers to be in the best interests of the Trust.

(d) Each quarter the Trustee must provide a report to the Noongar Relationship Committee and the Remuneration Auditor of all External Costs relating to Routine Tasks which have been incurred for the prior quarter.

S9.4.4 External Costs relating to Cultural Land

The Trustee is entitled to be reimbursed from the Trust, or pay from the Trust, External Costs relating to the Routine Task of holding and managing Cultural Land under clause 10 of the Trust Deed, provided that:

(a) the Trustee otherwise complies with the requirements in Schedule 9 and the Regulations when engaging third parties in relation to the Routine Task of holding and managing Cultural Land; or

(b) the External Costs for this purpose include rates, taxes, insurance, control of animal and plant pests, fire management and any other physical maintenance requirements of the Cultural Land;

and provided that:

(c) the Trustee must not charge External Costs for any administrative activity in holding and managing Cultural Land, including any work facilitating, coordinating or monitoring land management requirements; and

(d) each quarter the Trustee must provide a report to the Noongar Relationship Committee and the Remuneration Auditor of all External Costs for Cultural Land which have been incurred for the prior quarter.

S9.5 Trustee Expense Budget

There are rules in the Trust Deed (clause 23) about how the Trustee must prepare a budget for expenses which includes the Trustee Fee, External Costs and Internal Costs. The Trustee must work with the Noongar Advisory Company and Noongar Relationship Committee in relation to the budget.

(a) The Trustee Expense Budget must be prepared by the Trustee in accordance with clauses 18 and 23.3 of the Trust Deed.

(b) The Regulations may specify rules that apply for varying or exceeding the Trustee Expense Budget.

(c) The Trustee must report on a quarterly basis to the Noongar Relationship Committee and the Noongar Advisory Company in relation to the Trustee

Expense Budget, and in any event in the manner specified in clause 23.3 of the Trust Deed.

S9.6 Key Performance Indicators

The Trustee has key performance indicators that it must work towards.

The Trustee's performance must be assessed against the Key Performance Indicators specified in the Regulations.

S9.7 Review

This section explains how and when this Schedule 9 can be reviewed, but some parts cannot be changed – such as the Trustee's Fee.

(a) This Schedule 9 must be reviewed by the Trustee following the end of each 3 year period, in consultation with the Noongar Relationship Committee and the Remuneration Auditor.

(b) This Schedule 9 may only be varied with consent of the Noongar Relationship Committee, provided that:

(i) the Fee may not be changed; and

(ii) the Rate Card may be increased by no greater than the rate of indexation of the Consumer Price Index during the relevant period rounded down to the nearest $10.

S9.8 Remuneration Auditor

There must be an external third party called an auditor that helps keep the Trustee accountable in relation to the Trustee's Fees and Expenses.

(a) The Trustee must, with the consent of the Noongar Relationship Committee, engage an auditor to undertake the review and assessment functions of the Remuneration Auditor under this Schedule 9 and the Regulations.

(b) The Remuneration Auditor must be qualified and registered as a registered company auditor or an authorised audit company under the *Corporations Act 2001*, but must not be the same person as the auditor of the Trust.

S9.9 Dispute Resolution

There is a dispute resolution process in the Regulations that relates to the Trustee's payments under this Schedule.

Disputes regarding the Trustee's Remuneration and Expenses as set out in this Schedule must be resolved in the manner specified in the Regulations.

Schedule 10 – Custodian Trustee

S10.1 Appointment of Custodian Trustee

(a) If the Trustee is not a Professional Trustee Company, the Trustee must appoint a Custodian Trustee with custodian and advisory functions (as set out in S10.3 and S10.4) to hold the legal title to the assets of the Trust not required by the Trustee for the day to day operations of the Trust (including by accepting a transfer of all shares in Land Sub as well as any money, investments or other assets from a Contributor and so holding those assets) (**Protected Property**).

(b) Section 14 and section 15 of the Trustees Act shall apply to the position of Custodian Trustee except to the extent that they are inconsistent with or are modified by this Schedule 10.

S10.2 Qualifications of Custodian Trustee

The Custodian Trustee must:

(a) hold a current Australian Financial Services Licence, authorising the Custodian Trustee to provide a custodial or depositary service in accordance with section 766E of the Corporations Act or any other replacement legislation that deals with licensing of custodian or depositary service providers;

(b) have at least 5 years' experience of providing such a custodial or depositary service in relation to financial products (within the meaning of Chapter 7 of the Corporations Act) with a value of more than $100 million (indexed annually in accordance with the Consumer Price Index);

(c) have at least 3 years' experience of carrying out the functions set out in section 14 and 15 of the Trustees Act;

(d) have at least 1 years' experience of carrying out the functions set out in section 14 and 15 of the Trustees Act in relation to trusts which benefit, predominantly, Aboriginal persons; and

(e) be a Professional Trustee.

S10.3 Custodian Functions

(a) The custodian functions of the Custodian Trustee are:

(i) to hold legal title to the Protected Property and such other assets as the Trustee may determine; and

(ii) such additional functions as may be agreed in writing between the Trustee and the Custodian Trustee from time to time.

(b) Pursuant to the Trustees Act, where a Custodian Trustee is appointed to hold Protected Property:

(i) the Protected Property will vest in the Custodian Trustee as if the Custodian Trustee were the sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustees Act;

(ii) the management of the Protected Property and the exercise of all powers and discretions exercisable by the Trustee under the Trust shall be and remain vested in the Trustee as fully and effectually as if there were no Custodian Trustee;

(iii) the sole function of the Custodian Trustee is to get in and hold the Protected Property and invest and dispose of the Protected Property as the Trustee in writing directs, for which purpose the Custodian Trustee will execute all such documents and perform all such acts as the Trustee in writing directs; and

(iv) the Custodian Trustee is not liable for acting on any direction from the Trustee, but if the Custodian Trustee is of the opinion that any such direction conflicts with this Deed or the law, or exposes the Custodian Trustee to any liability, or is otherwise objectionable, the Custodian Trustee may apply to the Court for directions in the matter in accordance with the Trustees Act and any order giving directions binds both the Custodian Trustee and the Trustee.

(c) The Custodian Trustee may delegate its duties to one or more entities that meet the qualifications of a Custodian Trustee as set out in item S10.2.

S10.4 Advisory Functions

The advisory functions of the Custodian Trustee are as follows:

(a) subject to clause S10.3 the Trust Fund remains vested in the Trustee with all of the power to manage and administer the Trust Fund as if the Trustee were the sole trustee;

(b) pursuant to the Trustees Act and subject to the terms of this Deed, the Trustee may follow and act on the Custodian Trustee's advice and the Trustee will not be liable for anything done or omitted by the Trustee because the Trustee followed the advice of the Custodian Trustee;

(c) where the Trustee does not adopt a recommendation of the Custodian Trustee, the Trustee must provide written feedback and reasons to the Custodian Trustee regarding the Trustee's decision not to adopt the recommendation; and

(d) if the Trustee and the Custodian Trustee are unable to agree on any matter relating to this Deed or the Trustee or the Custodian Trustee believes that the opinion of the other conflicts with the law, this Deed, or is otherwise objectionable then either party may apply to the Court for directions in accordance with the Trustees Act and any order giving directions binds both the Trustee and the Custodian Trustee.

Schedule 11 – Default Investment Policy

S11.1 Objectives

(a) The objective of this Default Investment Policy is to provide a mechanism for the Trustee to undertake investment activities:

(i) on an interim basis until the Trustee develops an Investment Policy in accordance with clause 19.4 of the Trustee Deed; and

(ii) in accordance with a well performing but ultra-conservative investment strategy that preserves the Trust Fund.

(b) The Trustee must pursue the investment strategies in clauses S11.2 and S11.3 having regard to the objectives in clause S11.1(a).

S11.2 Investing funds

Where this Schedule 11 applies, the Trustee must only invest funds in investments that:

(a) do not prevent the Trustee from accessing all or part of the capital of the Trust Fund other than for a period of less than 3 consecutive months; and

(b) fall within the "Asset Class" set out in the table below, in such proportion as the Trustee determines within the corresponding "Asset Allocation Range" and having regard to the "Suggested Benchmark".

Asset class	**Asset Allocation Range**	**Suggested Benchmark**
Fixed income – Government	5%-20%	10%
Fixed income – Credit	10%-25%	16%
Cash	55%-80%	74%
		100%

*as taken from page 21 of Morgan Stanley's special report "*Giving Back: From Success to Significance (January 2014)"*

S11.3 Investing land

Where this Schedule 11 applies, the Trustee must only invest an interest in land provided that:

(a) where that land is:

(i) Cultural Land, the Trustee complies with clause 10 of the Trust Deed;

(ii) Development Land, the Trustee complies with clause 11 of the Trust Deed; and

(iii) Housing Land, the Trustee complies with clause 12 of the Trust Deed; and

(b) the investment:

(i) does not necessitate a Decision to Proceed; or

(ii) necessitates a Decision to Proceed but only:

A. if the Trustee considers the investment is reasonably necessary for the purpose of preserving the Trust Fund; or

B. following consultation with the Relevant Regional Corporation of the Region in which the interest in land is located, or where there is no Relevant Regional Corporation then the Agreement Group of that Region.

Schedule 12 – Dispute Resolution Procedure

S12.1 Dispute

On receipt of a Dispute Notice in accordance with clause 3.6, the Trustee may invoke this Dispute Resolution Procedure to resolve a Dispute.

S12.2 Trust Operations to Continue

(a) Despite the existence of a Dispute, the Trust must continue to operate and any person with powers and functions under this Deed must, to the extent practicable, continue to fulfil their obligations.

(b) This Dispute Resolution Process, including any determinations made pursuant to this Schedule 12, does not bind the Trustee or otherwise fetter its discretion in relation to carrying out its functions under this Trust Deed.

S12.3 Dispute Resolution

(a) If the Trustee determines to apply this Dispute Resolution Procedure on receipt of a Dispute Notice, the Trustee must:

(i) assist the parties to try and resolve the Dispute having regard to the spirit and intent of this Trust and the nature of the Dispute, including by any of the following:

A. facilitating meetings between representatives of the parties;

B. providing an opinion in writing or otherwise on the Dispute; or

C. obtaining legal advice regarding the Dispute on the basis that the legal advisor is instructed to prepare advice that is neutral and unbiased as between the parties, and making that advice available to the parties; and

(ii) refer the Dispute to mediation in accordance with clause S12.4 if the representatives of the parties are unable to resolve the Dispute within 45 days after the Trustee receives the Dispute Notice (or such longer period as the Trustee may agree).

S12.4 Mediation

(a) If the Dispute is not resolved in accordance with clause S12.3 within 30 days after the Trustee receives the Dispute Notice, the Trustee must refer the matter to mediation by:

(i) appointing a Mediator who is Independent to conduct a mediation between the parties in accordance with the Mediation Guidelines; and

(ii) advising the parties to the Dispute in writing of the appointment of the Mediator.

(b) The parties to the Dispute must participate in the mediation in good faith and use their reasonable endeavours to resolve the Dispute.

(c) Subject to clause S12.4(d), the Trustee shall bear the costs of the mediation, including engagement of the Mediator.

(d) Each party to the Dispute will bear their own costs of the mediation, including with respect to a party's individual legal representation or attendance at the mediation.

S12.5 Expert Determination

(a) If the Dispute is not resolved following mediation in accordance with clause S12.4 within 45 days after the Trustee receives the Dispute Notice, the Trustee must refer the matter to Expert determination by:

(i) appointing an Expert who is Independent to determine the Dispute, having regard to clause S12.5(c); and

(ii) advising the parties to the Dispute in writing of the appointment of the Expert.

(b) Subject to clause S12.7, the Trustee will bear the costs of the Expert.

(c) The Expert appointed under clause S12.5(a):

(i) must act as an expert and not as an arbitrator;

(ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Expert;

(iii) must not be a former or current employee or representative of any party; and

(iv) must disclose fully to the Trustee, before entering into an agreement to act as an Expert, any interest or duty which may conflict with his or her position.

S12.6 Procedure for Expert Determination

(a) A Dispute will be determined by the Expert by way of a hearing in accordance with this clause S12.6.

(b) Each party:

(i) may be legally represented at any hearing before the Expert;

(ii) will be entitled to produce to the Expert any materials or evidence which that party believes is relevant to the Dispute; and

(iii) will make available to the Expert all materials requested by him or her and all other materials which are relevant to his or her determination.

(c) The Expert will not be bound by the rules of evidence.

(d) Subject to any privileges under law, unless otherwise agreed by the parties, all material and evidence made available for the purposes of the determination will be kept confidential, unless disclosure by a party would be permitted under any provisions of this Deed.

(e) The Expert will be entitled to refer aspects of the Dispute to a third person for the purpose of taking advice on a specific matter relating to the Dispute and must endeavour to ensure that any third party, servant, agent or consultant of the Expert will be subject to the same obligations of confidentiality as outlined above.

(f) Subject to the Expert abiding by the rules of natural justice, the Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.

S12.7 Determination of Expert

(a) The determination of the Expert will:

(i) be final and binding on the parties;

(ii) be made without delay and in any event within 28 days of being appointed as an Expert unless the parties otherwise agree in writing;

(iii) subject to paragraph (iv) below, be made on a confidential basis as between the parties to the Dispute;

(iv) be provided to the Trustee; and

(v) determine what, if any, actions the parties must take to resolve the Dispute.

(b) Unless the parties otherwise agree the Expert will determine which party will bear the costs of the determination (and if the Expert considers it appropriate, reimbursing the Trustee for the costs of the Expert under clause S12.5) and in what proportion, having regard to:

(i) the capacity of a party to meet these costs;

(ii) the degree to which the Expert considers that party was at fault or unreasonable in failing to agree to the matter under reference; or

(iii) that the party's conduct is vexatious or frivolous,

and that party will bear those costs accordingly.

(c) The Expert may make whatever orders he or she sees fit with respect to payment of costs, including the giving of a direction to the Trustee that any funds held in an ENE Operations Account of a party, or future Distributions made to a party that is an Eligible Noongar Entity, shall first be applied to the satisfaction of any costs order made by the Expert.

S12.8 Legal Proceedings

To the extent that any legal proceedings are otherwise permitted under this Deed, no party is entitled to commence or maintain legal proceedings relating to any Dispute until the processes outlined in this Schedule have been followed, except where that party seeks urgent interlocutory or other urgent equitable relief.

Schedule 13 – Noongar Advisory Company Constitution

Constitution of Noongar Advisory Company Limited

A Public Company Limited by Guarantee

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Chapter 1– Interpretation

1.1 Definitions

In this Constitution:

Aboriginal Tradition means the bodies of traditions, customs and beliefs of Aboriginals or of a community of Aboriginals and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships;

Accounting Period means the period from the date of incorporation of the Company to the following 30 June and then each period of twelve months ending on 30 June in each year or any other period that the Board decides;

Agreement Group means the relevant "Native Title Agreement Group" as defined in an ILUA;

Agreement Group Endorsement means an endorsement given by an Agreement Group in accordance with Schedule 6 of the Noongar Boodja Trust Deed;

ASIC means the Australian Securities and Investments Commission or any successor entity to the Australian Securities and Investments Commission;

Auditor means a qualified and Independent person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act;

Australian Accounting Standards means:

(a) all accounting standards or principles that are required to be complied with by an Australian law; and

(b) except to the extent inconsistent with paragraph (a), an accounting standard or principle prepared by the Australian Accounting Standards Board, as updated and amended from time to time;

Board means the board of Directors of the Company;

Body Corporate has the meaning defined in section 9 of the *Corporations Act 2001* (Cth);

Business Day means a day on which the major trading banks are open for business in Perth, except a Saturday, Sunday or public holiday;

Casual Director has the meaning given in rule 7.8(a);

Chairperson means the person who is elected as chair and presides in accordance with rule 7.19;

Code of Conduct has the meaning given in clause 3.2(c)(i) of the Noongar Boodja Trust Deed;

Commissioner of Taxation means a Commissioner of Taxation (Federal), Second Commissioner of Taxation (Federal) and Deputy Commissioner of Taxation (Federal) as provided for in sections 4 and 7 of the *Taxation Administration Act 1953* (Cth);

Company means [Noongar Advisory Company Limited (ACN)];

Company's Objects means the objects of the Company as set out in rule 2.1;

Consensus means general agreement among the meeting present as to a particular matter whereby differing points of view, if any, have been considered and reconciled and any decision is generally agreed upon in accordance with Aboriginal Tradition. For the avoidance of doubt, a decision made by Consensus in accordance with Aboriginal Tradition, does not necessarily require that the decision be agreed upon unanimously;

Consent of the Members means a resolution of the Members in accordance with a duly convened meeting of the Members in accordance with the Members' constitution to consent, endorse, approve or authorise as the case may be;

Constitution means this constitution and any amendments or substitutions thereto;

Corporations Act means the *Corporations Act 2001* (Cth);

CSC means a corporation that is appointed by the Trustee as the Central Services Corporation in accordance with clause 5.1 under the Noongar Boodja Trust Deed;

Culturally Sensitive Information means information regarding the traditional laws and customs of the Noongar People, disclosure of which would contravene a cultural obligation or rule;

Director means a person appointed to perform the duties of a director of the Company;

Directors means the Company's Board of Directors;

Eligible Noongar Entities means the:

(a) CSC; and

(b) Regional Corporations;

Expert means a person having recognised qualifications and at least 5 years demonstrated experience that is appropriate and relevant to the matter for which the Expert is required;

Financial Year means the period from the date of this Deed to 30 June and then each period of 12 months ending on 30 June in each year;

ILUA means each of the Indigenous Land Use Agreements entered into by the State and the following native title groups:

(a) Whadjuk;

(b) Yued;

(c) Gnaala Karla Booja and Harris Family;

(d) South West Boojarah and Harris Family;

(e) Wagyl Kaip and Southern Noongar; and

(f) Ballardong

which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act, and which are collectively referred to as the ILUAs;

Independent means:

(a) in the case of a person, the person is not (and a member of the person's immediate family is not):

(i) a member of an Agreement Group;

(ii) a lineal descendant of, or first cousin of, a member of an Agreement Group;

(iii) married to or in a de facto relationship with a member of an Agreement Group;

(iv) a parent or sibling of a person who is married to or in a de facto relationship with a member of an Agreement Group;

(v) currently, and has not within the period of 3 years prior to their appointment been:

1. an employee, director, consultant, advisor, auditor or other service provider to the Noongar Community or any related or associated entity of an Agreement Group; or

2. an employee or director of a company or partner in a partnership, which is a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;

(b) in the case of an entity, the entity is not:

(i) an entity in which an Agreement Group (or any member of an Agreement Group) has a material interest;

(ii) an entity which is controlled by an Agreement Group (or any member of an Agreement Group); or

(iii) currently, and has not within the period of 3 years prior to its appointment been a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;

Independent Director has the meaning given in rule 7.2(a)(ii);

Member means a member of the Company in accordance with rule 3.4;

Member's Register means the list of Members of the Company. The first Member's Register is in **Schedule 1**;

Modify means to modify, vary, amend, alter, change or correct and the terms "**Modified**", "**Modifying**" and "**Modification**" shall have a corresponding meaning;

National Police Certificate means a document obtained from the relevant Australian police jurisdiction which lists an individual's disclosable court outcomes and pending charges sourced from the databases of all Australian police jurisdictions;

Nominations Committee means the committee established in accordance with clause 16 of the Noongar Boodja Trust Deed;

Noongar Boodja Trust means the Noongar Boodja Trust established on [insert];

Noongar Boodja Trust Deed means the trust deed establishing the Noongar Boodja Trust;

Noongar Community means the six Agreement Groups as constituted from time to time;

Noongar Corporations Committee means the committee established by the CSC in accordance with the CSC's constitution and comprising representatives from the CSC and each Regional Corporation (if any);

Noongar Director has the meaning given in rule 7.2(a)(i);

Noongar Relationship Committee the committee established by the Trustee in accordance with clause 15 of the Noongar Boodja Trust Deed;

Ordinary Resolution means a resolution passed by a simple majority of the Members voting at a general meeting or an annual general meeting;

Personal Interest has the meaning given in rule 7.13(a);

Policy and Procedures Manual has the meaning given in clause 3.2(c)(ii) of the Noongar Boodja Trust Deed;

Region means the following regions that comprise the Noongar Boodja Traditional Lands:

(a) Whadjuk Region;

(b) Yued Region;

(c) Gnaala Karla Booja Region;

(d) South West Boojarah Region;

(e) Wagyl Kaip / Southern Noongar Region; and

(f) Ballardong Region;

Regional Corporation means a corporation that is appointed by the Trustee as a Regional Corporation in respect of a specific Region in accordance with clause 4.1 of the Noongar Boodja Trust Deed;

Responsible Person means an individual who:

(a) performs a significant public function; or

(b) is a member of a professional body having a code of ethics or rules of conduct; or

(c) is officially charged with spiritual functions by a religious institution; or

(d) is a director of a company whose shares are listed on the Australian Stock Exchange; or

(e) has received formal recognition from government for services to the community; or

(f) is a Responsible Person as described by the Commissioner of Taxation in Taxation Ruling TR 95/27 or as otherwise approved by the Commissioner of Taxation from time to time;

Schedule means a schedule to this Constitution;

Secretary means any person appointed to perform the duties of a secretary of the Company;

Special Resolution means a resolution passed by a 75% majority of the Members at a general meeting or an annual general meeting;

State means the State of Western Australia, acting through the Department of the Premier and Cabinet;

State Director has the meaning given in rule 7.2(a)(iii);

State Endorsement means the State's written approval to the nomination of a corporation as the CSC, a Regional Corporation or any other Eligible Noongar Entity as the case may be, which approval must not be revoked during any period in which the entity is otherwise eligible to act in the relevant position;

Tax Concession Charity	means a charitable trust, fund or institution endorsed as a tax concession charity by the Australian Taxation Office;
Tax Law	means the *Income Tax Assessment Act* 1936 (Cth), *Income Tax Assessment Act* 1997 (Cth) and the *Taxation Administration Act* 1953 (Cth) as amended from time to time;
Trustee	means the initial trustee specified in clause 13.1 or the trustee of the Noongar Boodja Trust appointed under clause 13.4 of the Noongar Boodja Trust Deed from time to time;
Trustee Director	has the meaning given in rule 7.2(a)(iv); and
Trust Fund	has the meaning described in clause 6.1 of the Noongar Boodja Trust Deed.

1.2 Interpretation

In this Constitution unless the context requires otherwise:

(a) an expression in a rule that has a defined meaning for the purposes of the Noongar Boodja Trust Deed has the same meaning as in the Noongar Boodja Trust Deed;

(b) a word (including defined terms) importing the singular number or plural number includes the plural and singular respectively;

(c) a word importing any gender includes every other gender;

(d) headings are used for convenience only and do not affect the interpretation of this constitution;

(e) 'person' includes a public body, company or association or body of persons, incorporated or unincorporated;

(f) references to notices include formal notices of meeting and all documents and other communications from the Company to its Members;

(g) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;

(h) a reference to a document includes any Modification of it;

(i) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

(j) a reference to a Member present at a general meeting is a reference to a Member present in person or by attorney or representative; and

(k) a reference to writing and written includes printing, lithography and other ways of representing or reproducing words in a visible form.

1.3 Application of the Corporations Act

(a) Unless the contrary intention appears:

(i) an expression used in a rule that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision; and

(ii) subject to rule 1.3(a)(i), an expression in a rule that has a defined meaning for the purposes of the Corporations Act has the same meaning as in the Corporations Act.

(b) The replaceable rules do not apply to the Company except those which operate as mandatory rules for public companies under the Corporations Act.

Chapter 2 – Objects of the Company

2.1 Company's Objects

The objects and functions for which the Company is established (**Company's Objects**) are to:

(a) fulfil the role of the Noongar Advisory Company as provided for in clause 14.2 of the Noongar Boodja Trust Deed;

(b) assist the Trustee to manage its relationship with, and to liaise with, the Noongar Community, the Noongar Corporations Committee, the CSC and the Regional Corporations;

(c) foster mutual respect and cooperation between the Trustee, the Noongar Community, the CSC and the Regional Corporations; and

(d) make recommendations to the Trustee as to the fulfilment by the Trustee of the Trust Purpose and terms of the Noongar Boodja Trust Deed generally.

2.2 Company's Activities

In pursuing its Objects, the Company will undertake the following activities:

(a) **Specific**:

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

(i) considering an Eligible Noongar Entity's performance;

(ii) accepting Contributions into the Trust Fund;

(iii) accessing the income or capital of the Future Fund under clause 7.2(b) of the Noongar Boodja Trust Deed;

(iv) Modifying the Future Fund Capital Base under clause 7.4(c) of the Noongar Boodja Trust Deed;

(v) Distributing capital of the Noongar Future Fund under clause 7.5 of the Noongar Boodja Trust Deed;

(vi) appointing and removing the Trustee under clause 13.4(b) of the Noongar Boodja Trust Deed;

(vii) determining the selection process for a replacement trustee under clause 13.4(e) of the Noongar Boodja Trust Deed;

(viii) consulting with the Noongar Relationship Committee on matters relating to the CSC and Regional Corporations under clause 15.2(a)(v) of the Noongar Boodja Trust Deed;

(ix) appointing representatives to the Noongar Relationship Committee under clause 15.3(a) of the Noongar Boodja Trust Deed;

(x) determining the Annual Budget and Annual ENE Allocation under clause 18.2(a) of the Noongar Boodja Trust Deed;

(xi) reviewing and Modifying the Investment Policy under clause 19.5 of the Noongar Boodja Trust Deed;

(xii) appointing representatives of the Nominations Committee and Investment Committee;

(xiii) formulating and reviewing the Strategic Plan under clauses 21.2 and 21.3 of the Noongar Boodja Trust Deed;

(xiv) preparing the Trustee Expense Budget under clause 23.3 of the Noongar Boodja Trust Deed;

(xv) undertaking a strategic review of the Trust under clause 26 of the Noongar Boodja Trust Deed;

(xvi) establishing any Eligible Noongar Entity, Noongar Boodja Development Corporation or other fund, authority, institution, company, society, association or trust in furtherance of the Trust Purpose;

(xvii) Modifying this Deed under clause 27(b) of the Noongar Boodja Trust Deed;

(xviii) winding up or terminating the Trust under clause 28.3(a)(i) of the Noongar Boodja Trust Deed; and

(xix) applying any assets of the Trust Fund following winding up under clause 28.3(b)(i) of the Noongar Boodja Trust Deed;

(b) **Land**:

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

(i) matters relating to, connected with or arising out of a specific Region, the Relevant Regional Corporation, Agreement Group or Noongar Boodja Traditional Lands of that Region;

(ii) holding land in the Cultural Land Fund as contemplated under clause 10.3(c) of the Noongar Boodja Trust Deed;

(iii) identifying the Region and Relevant Regional Corporation to which Cultural Land relates under clause 10.2(b) of the Noongar Boodja Trust Deed;

(iv) reclassifying Cultural Land as Development Land under clause 10.4(a) of the Noongar Boodja Trust Deed;

(v) establishing a Noongar Boodja Development Corporation to undertake Property Development Activities under clause 11.4(b) of the Noongar Boodja Trust Deed;

and

(vi) considering the allocation of Net Proceeds from Property Development Activities in relation to Development Land under clause 11.5 of the Noongar Boodja Trust Deed; and

(c) **Funding**:

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

(i) considering Distributions to an Eligible Noongar Entity from the Operations Fund in exceptional circumstances under clause 8.4(b) of the Noongar Boodja Trust Deed;

(ii) considering applications for Distributions from Eligible Noongar Entities under clause 17.4 of the Noongar Boodja Trust Deed;

(iii) placing conditions for the release of Distributions to Eligible Noongar Entities under clause 17.5 of the Noongar Boodja Trust Deed; and

(iv) Modifying Funding Guidelines under clause 17.11 of the Noongar Boodja Trust Deed; and

(d) where there is no CSC, consulting with or providing consent to the Trustee under clauses 5.1(b)(ii)C and 5.2(b)(iv) of the Noongar Boodja Trust Deed.

2.3 Not-for-Profit

(a) Subject to rule 2.3(b), the income and property of the Company must be applied solely towards the Company's objects and no part of that income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, profit, fee or otherwise, to any Director or Member of the Company.

(b) Rule 2.3(a) does not prohibit making a payment approved by the Company's board:

(i) for out-of-pocket expenses incurred by a Director in performing a duty as a Director of the Company;

(ii) for a service rendered to the Company by a Director in a professional or technical capacity, other than in the capacity as a Director of the Company, where:

A. the provision of the service has the prior approval of the Company's board; and

B. the amount payable is not more than an amount which commercially would constitute reasonable payment for the services;

(iii) for reasonable remuneration of Directors pursuant to this Constitution;

(iv) in good faith to any Member or Director for goods supplied to the Company in the ordinary and usual course of business;

(v) of reasonable and proper interest on money borrowed from a Member or Director by the Company;

(vi) of reasonable and proper rent for premises let by any Member or Director to the Company; or

(vii) for indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by law and this Constitution.

2.4 General Company Powers

The Company has the powers set out in the Corporations Act but only to the extent necessary or convenient to carry out, or incidental to carrying out, the Company's Objects.

Chapter 3 - Nature of Company and Membership

3.1 Nature of the Company and Liability of Members

The Company is a public company limited by guarantee and the liability of the Members is limited.

3.2 Guarantee by Members

Every Member undertakes to contribute an amount not more than $1.00 to the property of the Company if it is wound up while he or she is a Member or within one year after he or she ceases to be a Member, for:

(a) payment of the Company's debts and liabilities contracted before the time he or she ceased to be a Member; and

(b) the costs, charges and expenses of winding up.

3.3 Entitlement to Membership

The persons entitled to be Members of the Company shall be:

(a) the Trustee of the Noongar Boodja Trust, from time to time; and

(b) if there is no Trustee of the Noongar Boodja Trust and only until such time as a Trustee is appointed to the Noongar Boodja Trust, the Directors of the Company.

3.4 Membership

(a) The Members are:

(i) the initial Members (who must meet the requirements of rule 3.3) as identified in the application for incorporation of the Company to ASIC and listed in **Schedule 1**;

(ii) such other entity entitled to membership under rule 3.3(a) and as the Company admits to membership in accordance with this Constitution; and

(iii) such other persons entitled to membership under rule 3.3(b) and who shall be deemed to be Members from the date the Board reasonably believes that no Trustee of the Noongar Boodja Trust exists.

(b) A Member has the right to:

(i) receive notice of, attend and be heard at any general meeting; and

(ii) 1 vote at any general meeting.

3.5 Application for Membership

(a) An application for membership made under rule 3.4(a)(ii) must be:

(i) made in writing in the form prescribed by the Directors; and

(ii) accompanied by evidence of the applicant's qualification for membership.

(b) At the next meeting of the Board of the Company following receipt of an application for membership from an entity/person entitled to be a Member under clause 3.3, the Directors on the Board of the Company must consider the application and determine whether to accept or refuse the application.

(c) The Directors must not refuse an application from a party who meets the requirements of rule 3.3.

3.6 Removal and Cessation of Membership

3.6.1 Death, resignation and other events

A Member immediately ceases to be a Member if:

(a) being the Trustee, it ceases to be the Trustee under the Noongar Boodja Trust Deed;

(b) being a Director appointed under rule 3.3(b), the member ceases to be a Director of the Company;

(c) the Member dies;

(d) the Member becomes of unsound mind or liable to have his or her property dealt with under a law about mental health;

(e) being a Body Corporate, upon the deregistration or other dissolution of that Member; or

(f) the Member resigns as a Member by giving 21 days written notice to the Company.

3.7 Register of Members

The Secretary must maintain a Member's Register in the form set out in **Schedule 1**.

3.8 Duties of Members

The Members of the Company must:

(a) act honestly, diligently and with reasonable care;

(b) act respectfully towards the Directors and other Members and not engage in personal attacks;

(c) advance the Company's Objects in accordance with this Constitution and the Corporations Act;

(d) not make improper use of information or opportunities received through being a Member of the Company; and

(e) not make any public statement on behalf of the Company unless authorised by the Board.

3.9 Disclosure of Interest

(a) A member of the Company who has any interest (other than an interest under Aboriginal Tradition) in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Company must disclose the nature of the interest at a meeting of the Members as soon as possible after the relevant facts have

come to his or her knowledge and a record of such disclosure must be made in the minutes of that meeting.

(b) Where a Member of the Company has disclosed an interest under this rule:

(i) the meeting of Members must consider whether a conflict exists for the Member on the matter;

(ii) if the meeting determines that a conflict exists, the Member must be invited back to the meeting whilst the matter is considered and may take part in any decision about the matter; and

(iii) the minutes of the meeting must record the disclosure of interest, the meeting's consideration of the disclosure and the outcome as to whether or not a conflict exists.

3.10 Liability of Members

(a) The Company is a public company limited by guarantee and accordingly, the liability of each Member is limited.

(b) Every Member undertakes to contribute an amount not more than **$1.00** to the property of the Company if it is wound up while they are a Member or within one year after they cease to be a Member for:

(i) payment of the Company's debts and liabilities contracted before the time they ceased to be a Member; and

(ii) the costs, charges and expenses of winding up.

Chapter 4 – Noongar Community

4.1 Recognition of the Noongar Community

(a) In exercising the Company's functions, the Company must have regard to:

(i) the fundamental connection between the Trust Fund and the Agreement Groups and that the source of the Trust Fund is the settlement between the Noongar Community and the State whereby native title rights and interests are dealt with in the manner envisaged in subsections 24CB(e) and 24EB(1)(d) of the Native Title Act, pursuant to the ILUAs; and

(ii) the connection between the Agreement Groups, the Regions and their related Regional Corporations.

(b) The Company may rely upon the terms of the ILUAs for the purpose of determining:

(i) the geographical areas that constitute the Regions that, together, represent the Noongar Boodja Traditional Lands; and

(ii) the identity of the traditional owners of each Region, who together, may select an Eligible Noongar Entity to be their Regional Corporation for their Region.

4.2 Communications

All communications, reports, plans and other documentation required to be prepared by or for the Company under this Constitution, that must or may be provided to the CSC or Regional

Corporations, must be prepared in plain English and in a culturally appropriate manner in form and style, including diagrammatical representations.

4.3 Culturally Sensitive Information

Notwithstanding any other provision of this Constitution, the Company may withhold Culturally Sensitive Information from all communications, reports, plans and other documentation required to be prepared by or for the Company under this Constitution unless strictly required for, and only to the extent necessary for, compliance with the terms of this Constitution, the Noongar Boodja Trust Deed, or at law.

4.4 Good Governance Practice

The Company must continue to improve, enhance and support the development of good corporate governance practice on the Board of the Company.

Chapter 5 – Member's Annual General Meetings

5.1 Holding an Annual General Meeting

(a) The Company must hold an annual general meeting within 18 months after its registration.

(b) The Company must hold an annual general meeting within 5 months after the end of each Financial Year.

5.2 Extension of Time for Holding Annual General Meetings

(a) The Company may apply to ASIC to extend the period within which the Company must hold an annual general meeting, provided the application is made before the end of that period.

(b) If ASIC grants an extension, the Company must hold its annual general meeting within the extended period.

5.3 Business of Annual General Meeting

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

(a) confirmation of the minutes of the previous general meeting, except at the first annual general meeting;

(b) the consideration of the reports that under the Corporations Act are required to be presented at the annual general meeting;

(c) the election of Directors;

(d) the appointment and remuneration of the Directors and Auditor; and

(e) asking questions about management of the Company and asking questions of the Auditor.

5.4 Decisions of Annual General Meeting of Sole Member

In accordance with section 249B of the Corporations Act, if the Company has only 1 Member, the Company may pass a resolution by the Member recording it and signing the record.

Chapter 6 – General Meetings of Members

6.1 Convening of Meetings by Directors

Any Director may convene a general meeting of Members.

6.2 Convening of Meetings by Members

The Directors must call and arrange to hold a general meeting if required to do so under this Chapter or sections 249D, 249E, 249F and 249G of the Corporations Act.

6.3 Notice of General Meeting

(a) Notice of every general meeting must be given to:

(i) each Member;

(ii) each Director; and

(iii) the Auditor.

(b) A notice of general meeting must specify:

(i) the date, time and place of the meeting;

(ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting;

(iii) the general nature of the business to be transacted at the meeting; and

(iv) any other matters required by the Corporations Act.

6.4 Waiving Notice

(a) A person may waive the requirement to give the person notice of a general meeting by written notice to the Company or attendance at the general meeting.

(b) The non-receipt of notice of a general meeting or a failure to give notice of a general meeting to any person entitled to receive notice of a general meeting does not invalidate any act, matter or thing done or resolution passed at the general meeting if:

(i) the non-receipt or failure occurred by accident or error;

(ii) before or after the meeting, the person waived or waives the requirement to give the person notice of that meeting; or

(iii) before or after the meeting, the person has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by written notice to the Company.

6.5 Members Resolutions

6.5.1 Notice of Members' resolutions

(a) If the Members wish to move a resolution at a general meeting, a notice of that resolution must be given to the Company by Members with at least 5% of the vote that may be cast on the resolution.

(b) A notice of a Members' resolution must:

(i) be in writing;

(ii) set out the wording of the proposed resolution; and

(iii) be signed by the Members proposing to move the resolution.

(c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

6.5.2 Consideration of Members' resolutions

(a) If the Company has been given notice of a Members' resolution, the resolution must be considered at the next general meeting that occurs more than 2 months after the notice is given.

(b) The Company must give all Members notice of that resolution at the same time, or as soon as possible afterwards, and in the same way, as it gives notice of a general meeting.

(c) The Company does not have to give notice of a resolution if the resolution is defamatory.

6.6 Observers

(a) The Directors may extend an invitation to any other person or Body Corporate to observe a general meeting. Any such invitee is not entitled to participate in the meeting or vote on matters.

(b) A corporate Member may appoint more than 1 representative to attend a general meeting but only 1 representative may exercise the Member's powers at any one time during the general meeting.

6.7 Postponing or Cancelling a Meeting

(a) The Directors may change the venue for, postpone, or cancel a general meeting, other than a general meeting which they are required to convene and hold under the Corporations Act.

(b) If a general meeting is called and arranged to be held under section 249D of the Corporations Act, the Directors may not:

(i) postpone it beyond the date by which section 249D of the Corporations Act requires it to be held; or

(ii) cancel it without the consent of the requisitioning Member.

6.8 Quorum at General Meetings

(a) No business, other than the election of a Chairperson and the adjournment of the meeting, may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

(b) A quorum consists of at least 75% of the Members.

(c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:

(i) where the meeting was convened on the request of Members, the meeting must be dissolved; or

(ii) in any other case:

A. the meeting stands adjourned to the day, and at the time and place, that the Directors decide or, if the Directors do not make a decision, to the same day in the next week at the same time and place; and

B. if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.9 Decisions at General Meetings

(a) Except where these rules or a law requires a Special Resolution, a decision or resolution of the Members must be made by Consensus.

(b) Where Consensus is not reached on a decision or resolution at a general meeting, the decision or resolution of the Members must be put to a vote at the same general meeting and is decided by a simple majority of votes cast by secret ballot by the Members present at the meeting.

(c) In accordance with section 249B of the Corporations Act, if the Company has only 1 Member, the Company may pass a resolution by the Member recording it and signing the record.

6.10 Voting

(a) At a general meeting a resolution put to the vote must be by way of secret ballot.

(b) Where the votes on a proposed resolution are equal, the Chairperson of the meeting has a casting vote in addition to his or her vote as a Member.

(c) Subject to this Constitution every Member present has 1 vote at a general meeting.

(d) A challenge to a right to vote at a general meeting:

(i) may only be made at the meeting; and

(ii) must be determined by the Chairperson of that meeting, whose decision is final.

(e) A vote not disallowed by the Chairperson of a meeting under this rule is valid for all purposes.

6.11 Chairperson of General Meetings

(a) If the Directors have elected 1 of their number as chair of their meetings, that person must (if present within 15 minutes after the time appointed for the meeting and is willing to act) preside as Chairperson at each general meeting.

(b) The Members present at a general meeting must elect 1 of their number to chair the meeting if:

(i) there are no Directors present within 10 minutes after the time appointed for the holding of the meeting; or

(ii) all Directors present decline to take the chair.

(c) Subject to the terms of this Constitution dealing with adjournment of meetings, the ruling of the Chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final.

(d) The Chairperson may expel any Member or Director from a general meeting if the Chairperson reasonably considers that the Member or Director's conduct is inappropriate behaviour, including:

(i) the use of offensive or abusive language which is directed to any person, object or thing; and

(iii) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance.

6.12 Auditor's Right to be Heard

The Auditor is entitled to be heard at a general meeting on any part of the business of that meeting that concerns the Auditor in their professional capacity.

6.13 Use of Technology at General Meeting

(e) With the Consent of the Members, the Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

(f) The Members may only withdraw their consent by a resolution of the Company at a general meeting.

6.14 Adjourning General Meetings

(a) The Chairperson of a general meeting may, and must if so directed by a resolution of Members at the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.

(b) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.

(c) Where a meeting is adjourned:

(i) the Directors may change the venue of, or postpone or cancel the adjourned meeting, unless the meeting was called and arranged to be held by the Members or the Court under the Corporations Act; and

(ii) if a meeting is called and arranged to be held under section 249D of the Corporations Act, the Directors may not postpone it beyond the date by which section 249D of the Corporations Act requires it to be held and may not cancel it without the consent of the requisitioning Member.

6.15 Written Resolutions of Members

(a) If the Company has more than 1 Member, the Members are not permitted to pass any resolution by way of a resolution in writing signed by all Members without a duly convened and held meeting of Members, because of the requirement under rule 6.6 for observers to be permitted to attend (but not vote) at all general meetings.

(b) For the avoidance of any doubt, the prohibition in rule 6.15(a) does not apply if the Company has only 1 Member, in which case section 249B(1) of the Corporations Act will apply.

Chapter 7– Directors

7.1 Initial Directors

The first Directors of the Company are the persons specified as directors in the application to register the Company under the Corporations Act.

7.2 Number of Directors

(a) Until otherwise determined in accordance with this Constitution, there must be a maximum of 6 Directors who are qualified in accordance with rule 7.4, comprised of:

(i) 2 Directors being Expert representatives of the Noongar Community (**Noongar Directors**);

(ii) 2 Directors being Independent (**Independent Directors**);

(iii) 1 Director nominated by the State (**State Director**); and

(iv) 1 Director nominated by the Trustee (**Trustee Director**).

(b) All Directors must be confirmed by the Nominations Committee as being eligible for appointment.

(c) The Trustee must ensure that as far as possible, the Directors offer diverse skills and experience.

7.3 Term of Appointment

(a) A Director will continue to be a member of the Board for the earlier of:

(i) the expiry of a period of 2 years;

(ii) the expiry of such other term (not exceeding 3 years) of appointment determined by the Board in the resolution appointing that Director in order to give effect to a rotational system of appointment of Directors; and

(iii) the date on which the Director retires or is removed from the office by virtue of such other rule of this Constitution.

(b) A Director is eligible for re-election.

7.4 Qualifications of Directors

A person is only qualified for appointment as a Director of the Company if they can demonstrate the following qualifications:

(a) financial literacy;

(b) leadership experience;

(c) absence of conflicting commitments;

(d) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);

(e) has not been found in a civil proceeding to have violated any federal or state securities or commodities law;

(f) is not subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity;

(g) has completed a director's course approved by the Australian Institute of Company Directors (**AICD**) or a suitable equivalent to the AICD;

(h) has as a minimum, 5 years' experience as a director of an Australian company governed by the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and can demonstrate a preparedness to question, challenge and critique and a willingness to understand and to commit to the highest standards of governance;

(i) is of high repute and recognised integrity;

(j) is not a person who is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director;

(k) has not been disqualified (either automatically or by Court order) from managing corporations under:

(i) Part 2D.6 of the Corporations Act, without permission or leave to manage the Company being granted under section 206F or 206G; or

(ii) Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), without permission or leave to manage the Company being granted under section 279-30 or 279-35;

(l) has not been disqualified (either automatically or by Court order) from managing corporations, or from doing anything else contemplated by the role of Director, under any other applicable law;

(m) is not a person who has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct (including fraud), other than where:

(i) 20 years has passed from the time of conviction; or

(ii) 10 years has passed from the time of conviction and:

A. the conduct resulted in a term of actual imprisonment of less than 3 months; or

B. the conduct resulted in a fine of less than $5,000;

(n) is a Responsible Person and has such other characteristics as may be considered

appropriate for membership on the Board;

(o) is not an employee, officer, director or committee member of:

(i) an Eligible Noongar Entity; or

(ii) the Trustee (except the Trustee Director); and

(p) is able to produce an acceptable National Police Certificate to the Board.

7.5 Appointment of Directors

7.5.1 Nomination of Noongar Directors and Independent Directors

(a) When selecting the Noongar Directors and Independent Directors, the Board must request the Nominations Committee of the Trust to:

(i) review the composition of the Directors to ensure that there is a balanced mix of expertise and experience;

(ii) call for nominations by advertising in any reasonably relevant online and hard copy publications;

(iii) develop appropriate criteria for assessing the suitability of candidates;

(iv) consider candidates on the basis of merit rather than any affiliation;

(v) request from candidates and third party sources sufficient information to enable the Board to assess the candidates' fulfilment of the qualifications in clause 7.4 and the candidates' suitability; and

(vi) make recommendations to the Board for appointments.

(b) The Board must by resolution nominate for appointment by the Members, 2 Noongar Directors and 2 Independent Directors in accordance with the following procedure:

(i) the Board will review its composition to ensure that it has the appropriate mix of expertise and experience;

(ii) the Board will only consider candidates selected by the Nominations Committee;

(iii) candidates are evaluated using criteria adopted by the Board to determine their suitability based on the information supplied by the candidates and information obtained from other sources; and

(iv) candidates will be preferred if they have:

A. experience working with Indigenous communities;

B. a minimum 5 years financial or business management experience; and

C. experience dealing with similar trusts to the Noongar Boodja Trust.

7.5.2 Appointment of Directors

Directors are appointed by an Ordinary Resolution of the Members at a general meeting in accordance with the composition required by rule 7.2.

7.5.3 Consent to act as Director

A person must not be appointed as a Director unless, prior to his or her appointment, that person has provided a signed consent to the Company to act as a Director.

7.6 Removal of Director by the Members

(a) Subject to rule 7.6(b), in accordance with section 203D of the Corporations Act, at any time the Company may by Ordinary Resolution of the Members, passed at duly convened general meeting of the Company (even in the case of a Company with only one Member):

(i) remove a Director from office; and

(ii) appoint another person as a replacement Director.

(b) The procedure in section 203D of the Corporations Act must be followed in order to remove a Director from office, which requires:

(i) the Members providing notice of intention to move the resolution to the Company at least 2 months before the meeting is to be held;

(ii) the Company giving the Director a copy of the notice as soon as practicable after it is received by the Company; and

(iii) the Director being entitled to put their case to Members by:

A. the Director giving the Company a written statement for circulation to Members; and

B. the Director speaking to the motion at the meeting (whether or not the Director is a Member of the Company).

7.7 Vacation of Office

(a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this Constitution, the office of Director becomes vacant if the Director:

(i) resigns or retires from office by written notice to the Company;

(ii) becomes a director of the:

A. Eligible Noongar Entities; or

B. Trustee (except the Trustee Director);

(iii) becomes bankrupt;

(iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(v) is absent without the consent of the Directors from all meetings of the Directors held during a continuous period of 3 months and the Board resolves that the office of that Director be vacated;

(vi) is convicted on indictment of an offence and the Directors do not within one month after that conviction resolve to confirm the Director's appointment or election (as applicable) to the office of Director;

(vii) is no longer permitted by the Corporations Act to be a Director or becomes prohibited from being a Director by reason of an order made under the Corporations Act;

(viii) the term of the person's appointment expires;

(ix) the person, being a nominated Company representative, is removed and replaced by that person's nominator; or

(x) the person is no longer eligible to be a Director of the Company.

7.8 Casual Vacancies

(a) Subject to rules 7.2 and 7.4, the Board may by unanimous resolution at any time appoint a person to be a Director, to fill a casual vacancy (**Casual Director**).

(b) A Casual Director appointed in accordance with this rule must meet the qualification requirements for Directors in rules 7.2 and 7.4. A Casual Director holds office until the next general meeting of Members and is then eligible for re-election.

7.9 General Duties

7.9.1 Director's Duties

The Directors, Secretary, and any other officers must comply with the duties imposed on them by the Corporations Act and the general law. These include, for example:

(a) a duty of care and diligence;

(b) a duty of good faith;

(c) a duty of disclosure of Personal Interests;

(d) a duty not to improperly use position or information; and

(e) a duty to prevent insolvent trading.

7.9.2 Code of Conduct and Governance Training

(a) The Company must adopt and comply with the Code of Conduct and Policy and Procedures Manual under the Noongar Boodja Trust Deed.

(b) The Board must ensure that each Director undertakes ongoing corporate governance and director duties and responsibilities training and commences undertaking such training within 12 months of that Director's appointment.

7.10 Powers of the Board

(a) The business of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Corporations Act or by the provisions of the Constitution, required to be exercised by the Company in general meeting.

(b) Subject to the Constitution, the provisions of the Corporations Act and such regulations as may be prescribed by the Company in general meeting, no regulation made by the Company in general meeting may or does invalidate any prior act of the Board that would have been valid if that regulation had not been made.

(c) The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the

Company.

(d) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 Directors or in such other manner as the Board from time to time determines.

(e) The Board may by power of attorney appoint any person, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities, and discretions (not exceeding those vested in or exercisable by the Board under the Constitution) for such period and subject to such conditions as the Board think fit.

(f) Any power of attorney may contain provisions for the protection and convenience of persons dealing with any such attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities, and discretions vested in the attorney.

7.11 Exercise of Powers

Except as specifically contemplated to the contrary in this Constitution, the Company may, in any manner permitted by the law:

(a) exercise any power;

(b) take any action; or

(c) engage in any conduct or procedure,

which under the Corporations Act a public company limited by guarantee may exercise, take or engage in.

7.12 Delegation

(a) The Board may by resolution delegate any of its powers to:

(i) a committee of Directors; or

(ii) any other persons, but not less than 2 persons, acting jointly.

(b) A delegate must exercise the powers delegated in accordance with any directions of the Directors.

(c) The exercise of a power by a delegate is as effective as if the Directors had exercised it.

7.13 Directors with Possible Conflict of Interest

(a) A Director who has any interest (**Personal Interest**) in a matter that relates to the affairs of the Company must disclose:

(i) the nature and extent of the Personal Interest; and

(ii) the relation of the Personal Interest to the affairs of the Company,

at a meeting of the Board as soon as possible after the relevant facts have come to his or her knowledge and record of such disclosure must be made in the minutes of that meeting.

(b) Within 28 days after their appointment a Director must, if the Director has a Personal

Interest, give the other Directors notice of the interest in accordance with this rule 7.13.

(c) A Director who has disclosed a Personal Interest in a matter that is being considered at a meeting of the Board must not be present while the matter is being considered or vote on the matter, unless the Directors who do not have a Personal Interest in the matter have passed a resolution that:

(i) identifies the Director, the nature and extent of the Director's Personal Interest in the matter and its relation to the affairs of the Company; and

(ii) states that those Directors are satisfied that the Personal Interest should not disqualify the Director from voting or being present.

(d) The Directors may make regulations requiring the disclosure of interests that a Director, and any person considered by the Directors as related to or associated with the Director, may have in any matter concerning the Company or a related Body Corporate. Any such regulations bind all Directors.

(e) Where the Board believes that a significant conflict exists for a Director on a Board matter, the Director concerned must not receive the relevant Board papers and must not be present at the meeting whilst the item is considered.

7.14 Director's Fees

(a) Subject to this rule, each Director is entitled to such reasonable remuneration as the Members in a general meeting decide.

(b) Directors' remuneration must be measured against, and must not exceed, the professional fees ordinarily charged by persons providing such services on an arm's length basis, taking into account the skill, experience and ability of the relevant Director.

(c) The Directors' remuneration (if any) is deemed to accrue from day to day.

7.15 Board Meetings

(a) The Board may meet together and adjourn and otherwise regulate their meetings as they think fit.

(b) The linking together by telephone or other electronic means of a sufficient number of the Directors to constitute a quorum constitutes a Board meeting. All of the provisions in this Constitution relating to Board meetings apply, so far as they can and with any necessary changes, to Board meetings by telephone or other electronic means.

(c) A Director who takes part in a Board meeting by telephone or other electronic means is taken to be present in person at the meeting.

(d) A Board meeting by telephone or other electronic means is taken as held at the place decided by the Chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

(e) The Board may extend an invitation to any person it deems appropriate to sit with the Board, provided that any such invitee is not entitled to vote on matters.

7.16 Convening Board Meetings

(a) A Director may convene a meeting of the Board whenever he or she thinks fit.

(b) A Secretary must, on the request of a Director, convene a meeting of the Board.

7.17 Notice of Board Meetings

(a) Subject to this Constitution, notice of a meeting of the Board must be given to each person who is, at the time of giving the notice, a Director, except a Director on leave of absence approved by the Board.

(b) A notice of a Board meeting:

(i) must be given not less than 14 Business Days prior to the meeting, or such other period as agreed by the Board and recorded in the Board's meeting minutes;

(ii) must specify the date, time and place of the meeting;

(iii) need not state the nature of the business to be transacted at the meeting; and

(iv) may be given in person or by registered post, telephone, fax or other electronic means.

(c) A Director may waive the requirement to give the Director notice of a meeting of the Board by notifying the Company to that effect in person or by post, telephone, fax or other electronic means.

(d) The non-receipt of notice of a meeting of the Board by, or a failure by the Board to give notice of a meeting of the Board to a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:

(i) the non-receipt or failure occurred by accident or error;

(ii) before or after the meeting, the Director:

A. waived or waives notice of that meeting; or

B. notified or notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or

(iii) the Director attended the meeting.

7.18 Quorum at Board Meetings

(a) No business may be transacted at a meeting of the Board unless a quorum of Directors is present at the time the business is dealt with.

(b) A quorum consists of a majority of the Directors which must include 1 Noongar Director and 1 Independent Director.

(c) If the quorum is not present within 30 minutes after the time appointed, the meeting stands adjourned to the date, time and place as the Directors decide.

(d) If there is a vacancy in the office of a Director then the remaining Directors may act only for the purpose of filling the vacancy.

(e) If the number of Directors in office at any time is not sufficient to constitute a quorum at a meeting of Directors or is less than the minimum number of Directors fixed under this Constitution, the remaining Directors must act as soon as possible to:

(i) increase the number of Directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this Constitution;

(ii) convene a general meeting of the Company for that purpose; or

(iii) appoint additional Directors,

and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

7.19 Chairperson of Directors

(a) The Board may elect one of the Directors as Chairperson of Directors and may decide the period for which that Director is to be the Chairperson.

(b) The Chairperson must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as Chairperson at each meeting of the Board.

(c) The Directors present at the meeting must elect 1 of them as Chairperson of the meeting if:

(i) there is no Chairperson;

(ii) the Chairperson is not present within 10 minutes after the time appointed for the meeting; or

(iii) the Chairperson is present within that time but is not willing to act as Chairperson of the meeting.

7.20 Decisions of Directors

(a) A meeting of the Board at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Directors under this Constitution.

(b) The Board must first attempt to make decisions or resolutions of the Board by Consensus.

(c) If a Consensus cannot be reached, the question shall be voted on at the same meeting on the same day and the decision shall be carried where a majority of the Directors present and entitled to vote, vote in favour of the decision at the meeting.

(d) The opinions or decisions of the Board of the Company are recommendations only and do not bind the Trustee in any way.

7.21 Alternate Directors

(a) Subject to rules 7.2, 7.3 and 7.4, a Director may, with the written approval of the other Directors, appoint a person to be an alternate Director in his or her place during such period as he or she thinks fit.

(b) An alternate Director is entitled to notice of Board meetings and if the appointer is not present, is entitled to attend and vote in his or her stead.

(c) An alternate Director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate Director is deemed to be the exercise of the power by the appointer.

(d) The appointment of an alternate Director can be terminated at any time by the appointer notwithstanding that the period of the appointment of the alternate Director has not expired, and terminates in any event if the appointer's office as a Director is vacated.

(e) An appointment or the termination of an appointment of an alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment

and served on the Company.

7.22 Minutes

(a) The Board must cause minutes of all proceedings of general meetings, meetings of the Board and meetings of committees formed by the Board to be entered, within one month after the relevant meeting is held, in books kept for the purpose.

(b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the Chairperson of the meeting at which the proceedings took place.

(c) During business hours all Members have the right to inspect confirmed minutes of meetings of the Board free of charge.

(d) Members may request in writing from the Company a copy of any minutes of a general meeting or any minutes of a resolution passed by Members without a meeting and the Company must provide a copy of the minutes requested in accordance with the provisions of the Corporations Act.

7.23 Circular Resolution in Writing

(a) A resolution in writing passed in accordance with the rules and signed by all Directors, excluding Directors who have been given a leave of absence, is to be treated as a determination of the Directors passed at a meeting of the Directors duly convened and held.

(b) A resolution in writing may consist of several documents in like form, each signed by one or more Directors.

(c) If so signed, the resolution takes effect on the latest date on which a Director signs one of the documents.

(d) A document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing.

(e) A document bearing a facsimile of a signature is to be treated as signed.

(f) The Directors may pass a resolution using any technology consented to by all the Directors including email provided that:

(i) all Directors entitled to vote on the resolution deliver written communication that they are in favour of the resolution set out in the communication;

(ii) each Director confirms by telephone or other verbal communication to at least one other Director that they are in favour of the resolution;

(iii) the resolution is passed when the last Director sends a written communication; and

(iv) the resolution is ratified at a subsequent Directors' meeting.

7.24 Validity of Acts

An act done by a person acting as a Director or a meeting of the Board attended by a person acting as a Director, is not invalidated merely because of:

(a) a defect in the appointment of the person as a Director;

(b) the person being disqualified from being a Director or having vacated office; or

(c) the person not being entitled to vote,

if that circumstance was not known by the person or the Directors (as applicable) when the act was done.

Chapter 8 – Company Secretary

8.1 Company Secretary

(a) The Board must appoint a Secretary.

(b) The Board may at any time terminate the Secretary's appointment, with or without cause.

(c) The Directors may determine the terms and conditions of appointment and removal of a Secretary, including remuneration.

(d) The Secretary may carry out any act or deed required by this Constitution, the Corporations Act or by any other statute to be carried out by the Secretary of the Company.

Chapter 9 – Director's Indemnity and Insurance

9.1 Indemnity

(a) This rule applies to:

(i) each person who is or has been a Director, or Secretary of the Company; and

(ii) any other officers or former officers of the Company or of its Related Bodies Corporate that the Board decides in each case.

(b) Subject to the Corporations Act, the Company must indemnify and if requested by a person to whom this rule applies enter into a deed indemnifying, on a full indemnity basis and to the full extent permitted by law, each person to whom this rule applies for all losses or liabilities incurred by the person as an officer of the Company or of a related Body Corporate including, but not limited to, a liability for negligence or reasonable costs and expenses incurred:

(i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

(ii) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Corporations Act.

(c) The indemnity in this rule 9.1:

(i) is a continuing obligation and is enforceable by a person to whom rule 9.1 applies even though that person has ceased to be an officer of the Company or of a related Body Corporate; and

(ii) operates only to the extent that the loss or liability is not covered by insurance.

9.2 Insurance

Subject to the Corporations Act, the Company may, to the extent permitted by law, purchase and

maintain insurance, or pay or agree to pay a premium for insurance, for any person to whom this rule applies against, any liability incurred by the person as an officer of the Company or of a related Body Corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

9.3 No limits

Nothing in Chapter 9:

(a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or

(b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

Chapter 10 – General Legal Provisions

10.1 Minutes of Meetings

(a) In accordance with section 251A of the Corporations Act (or any other applicable law) and this Constitution, the Company must keep minute books in which it records within 1 month:

(i) proceedings and resolutions of general meetings;

(ii) proceedings and resolutions of Board meetings (including meetings of a committee of directors);

(iii) resolutions passed by Members without a meeting; and

(iv) resolutions passed by Directors without a meeting.

(b) The Company must keep its minute books at:

(i) its registered office; or

(ii) its principal place of business; or

(iii) another place in Australia approved by ASIC.

10.2 Accounts, Audit and Records

10.2.1 Accounts

(a) The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act (or any other applicable law).

(b) The Company must prepare a financial report for each Accounting Period in accordance with all applicable laws.

(c) The Board must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act (or any other applicable law).

10.2.2 Auditor

(a) The Company must appoint an Independent qualified company auditor registered under Part 9.2 of the Corporations Act whose duties will be regulated in accordance with the

Corporations Act (or any other applicable law).

(b) The Company must procure a report by its auditor whether the financial statements and financial reports of the Company for the previous Financial Year are fair and accurate according to the Australian Accounting Standards.

(c) The Company must provide a copy of its audit report as soon as practicable after receipt to the:

(i) Eligible Noongar Entities;

(ii) State; and

(iii) Trustee.

(d) The remuneration of the Auditor must be fixed.

10.2.3 Records and rights of inspection by Members

Subject to the Corporations Act, the Directors may determine:

(a) whether and to what extent;

(b) at what times and places; and

(c) under what conditions,

the accounting records and other documents of the Company or any of them are open to the inspection of Members (other than Directors). A Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

10.3 Notices

10.3.1 Persons authorised to give notices generally

(a) A notice by the Company in connection with this Constitution may be given on behalf of the Company by a solicitor, Director, or Secretary of the Company.

(b) The signature of a person on a notice given by the Company may be written, printed or stamped.

10.3.2 Method of giving notices to Members

Subject to rule 10.3.1 and in addition to the method for giving notices permitted by statute, a notice may be given by the Company to a Member by:

(a) delivering it to the Member personally or to their street address stated in the Members Register;

(b) posting it by prepaid post to the Member's street or postal address stated in the Members Register; or

(c) if the Member has nominated a fax or e-mail address to the Company, fax or e-mail.

10.3.3 Method of giving notices to third parties

A notice may be given by the Company to the CSC and Regional Corporations, the Member or the Auditor by delivering it:

(a) to the address provided to the Company by the recipient from time to time; and

(b) in accordance with any preferred notice procedure that applies to the recipient.

10.3.4 Address for giving notices to the Company

(a) The street and postal address of the Company is its registered office.

(b) The fax number or e-mail address of the Company is the number which the Company may specify by written notice to the Members as the fax number or e-mail address to which notices may be sent to the Company.

10.3.5 Time notice is given

A notice is taken as given by the Company and received by the Member:

(a) if delivered, at the time of delivery;

(b) if faxed, when the sender of the fax receives a confirmation report that all pages of the fax have been transmitted to the recipient's fax number, but if transmission or receipt is after 5.00 pm WST, it is taken as received on the next Business Day;

(c) if sent electronically, on the next Business Day; and

(d) if posted, on the third Business Day after it was posted.

10.4 Altering this Constitution

A Special Resolution making any Modification to, or affecting the rules of this Constitution has no effect unless it is consistent with the provisions of the Noongar Boodja Trust Deed and the Corporations Act and approved in writing by:

(a) the State;

(b) the Commissioner of Taxation, if required by the Tax Law; and

(c) Members by special resolution.

10.5 Winding Up

(a) Upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities will not be paid to or distributed among the Members but will be given or transferred to a fund or institution which:

(i) has objects consistent with the Noongar Boodja Trust;

(ii) whose constitution prohibits distributions or payments to its members; and

(iii) is a non-profit entity endorsed by the Commissioner of Taxation as a Tax Concession Charity for the purposes of the Tax Law.

(b) The identity of the company, fund or institution referred to above must be decided by the Members by Ordinary Resolution at or before the time of winding up or dissolution of the Company and, if the Members cannot decide, by the Supreme Court of Western Australia.

Schedule 1 – Member's Register

The initial Member(s) of the company (whose consents are set out below) adopt, on registration of the company, the above constitution as the company's constitution in accordance with section 136(1) of the Corporations Act.

Name	**Address**

Dated:

Executed by)

)

(ACN))

pursuant to)

of the)

Director	Director/Secretary
Name (Please Print)	Name (Please Print)